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STATE OF MONTANA

REAL ESTATE MANUAL

Revised Edition

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Montana. Real Estate Commission
Manual for real estate brokers and
salesmen. Revised edition

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Real Estate Manual

State of Montana

Manual

for

Real Estate Brokers and Salesmen

Compiled by the

MONTANA REAL ESTATE COMMISSION

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Introduction

A. The Montana Real Estate License Act.

The Montana Real Estate License Act of 1963 was passed not to make a monopoly of the real estate business, but to protect the people of the State of Montana. Through licensing, the law seeks competency and integrity on the part of those engaged in the business. Because competency and integrity are essential to good business practice, the law has had the effect of raising the general standing of the real estate business and thus has helped to safeguard the interests of both the public and those engaged in the business.

Codes of ethics have been voluntarily adopted by various organizations of real estate men and women as guiding standards of high moral and ethical practice. Adherence to such codes is recommended to all who are licensed to engage in the real estate business, because adherence not only enables those engaged in the business to render better service to the people of Montana and to safeguard the public's interest, but will tend to encourage greater use of the real estate broker's and salesman's services as public confidence continues to grow.

B. The Montana Real Estate Manual.

This manual is designed to assist an applicant who is preparing for a Montana real estate broker's or salesman's license examination, and offers an introduction to the basic principles of real estate. It also provides a handy reference to those already engaged in the profession and offers a convenient basis for further study. *This manual is not intended to be a sole authority on real estate, nor is it intended to offer all of the information necessary to pass the licensing examinations, but it can serve as a foundation upon which the applicant may build his knowledge.* It is hoped that the applicant will make use of the included list of references so that he may continually increase his knowledge of the real estate business. The Montana Real Estate Commission also frequently presents local or statewide seminars to allow further exchange of information between selected technical personnel and the real estate businessman.

This manual must not be considered a substitute for legal advice. Numerous highly technical legal problems arise in real estate, and in most cases complete legal advice should be sought.

A knowledge of the material in this manual and the securing of a license is only the first step toward proper qualification. There is no substitute for experience, but study can and will

save time, worry, and costly errors. Such study, combined with experience, help the student become a real professional.

It is hoped that a careful study of this manual will contribute to increasingly high standards on the part of the real estate profession. Such a result will benefit the profession itself while assuring the maximum protection for the public and thus earn the public's confidence and trust.

Section I

Competency Standards for Applicants for a Real Estate License

SALESMAN APPLICANT

1. A basic knowledge of the English language, including reading, writing and spelling.

2. An ability to compute mathematical problems related to normal real estate transactions.

3. A working knowledge of salesmanship and public relations.

4. A good understanding and knowledge of real estate business practices and principles, including elementary land economics, land descriptions, real estate terminology, valuation principles, and the transfer and financing of real property.

5. A thorough knowledge of the proper preparation, purpose and use of all documents generally used by a real estate salesman in a typical real estate transaction, such as the Broker's Employment Contract, Receipt and Agreement to Sell and Purchase, Closing Statements, etc.

6. A good understanding of the laws of agency, especially in relation to the rights and responsibilities of the seller, buyer, broker and salesman.

7. A general knowledge of state laws and local ordinances directly affecting the use or sale of real property.

8. An understanding of the Code of Ethics of the National Association of Real Estate Boards and of the canons of trustworthy business practice.

9. A thorough knowledge of the Montana Real Estate License Law.

BROKER APPLICANT

10. All of the knowledge and ability required of an applicant for a license as a real estate salesman, but to a greater extent, in that the broker is expected to act as a supervisor and instructor of the salesman.

11. An ability to accurately and clearly interpret to the par-

ties concerned the meaning of financial consequences of all clauses or conditions in a listing agreement, sales contract, closing statement or other document generally used by brokers in performing real estate services for members of the general public.

12. An ability to maintain proper permanent files, to keep accurate financial records, and to properly account for and safeguard all funds or other property held for others.

Section II

Real Estate Examinations

Applicants for licensing under the Montana Real Estate Act of 1963, are required to take examinations. Applications may be obtained from the Montana Real Estate Commission upon request. These examinations are given, in compliance with the requirements of the licensing law, for the purpose of determining general knowledge and professional competency of persons planning to enter the Real Estate industry. The law imposes upon the Montana Real Estate Commission the responsibility of regulating and controlling the issuance and revocation or suspension of licenses. This authority includes the investigation of complaints against licensees for fraud, misrepresentation, secret profits, commingling of deposit funds, false advertising, failure to maintain proper trust accounts and other causes.

The salesman examination has been prepared to determine whether the applicant is well-grounded in the fundamentals of real estate principles and practices. Study materials, such as this manual, are necessary in preparation for the examination and it is essential that the sponsoring broker instruct the applicant and assist him in his preparation for the examination. Included in the examination is the preparation of a listing contract and an offer and acceptance type of sales contract which is a vital part of the salesman's duties and obligations. It is of utmost importance that the salesman know how to properly prepare these contracts in accordance with the understanding and intention of the parties.

The broker examination is far more comprehensive than the salesman examination and requires a broader knowledge of real estate law and agency operations.

Real estate examinations include questions on the following:

1. Montana Real Estate License Act of 1963, as amended, and other general laws involved in real estate transactions.

2. Code of Ethics of the National Association of Real Estate Boards and business ethics.

3. Definitions of real estate terms.

4. Writing and composition.

5. A general knowledge of Montana statutes relating to deeds, mortgages, contracts of sale, agency and brokerage.

6. Land descriptions and elementary principles of land economics and appraisal.

7. Arithmetic involved in land area measurement, figuring appraisals, computing and prorating taxes and insurance premiums, and the computing of real estate commissions.

8. Preparation of:

Listing Contract

Receipt and Agreement to Purchase

Closing Statements

9. Use of the various real estate forms common in Montana; i.e., mortgages, trust deeds, bills of sale, satisfactions, assignments, installment contracts, promissory notes.

10. Standard practices; i.e., escrow procedure, payment of costs by parties, deposits of earnest money, loan procedures, where real estate records are found, who is responsible to correct land title defects, real estate management, etc.

Passing the examination is only the first step in your pursuit of a successful career in the real estate profession. Your broker should spend considerable time instructing you regarding ethics and proper real estate business procedures. You should constantly work toward improving your educational and professional background. Both the broker and salesman should strive continually to better fulfill the obligations of their agency relationship and their duty to protect the public interest.

Section III

Interests in Land

GENERAL

Our modern law of real property developed from the English feudal system of land ownership. The basic concept of the feudal system was that the king was the title owner of all the land. The king would grant large tracts of land to his faithful lords in return for allegiance and service. The lords granted portions of their land to lesser nobles and these in turn granted portions to still lesser nobles. These grants, called "feuds," continued on down to the "villiens" who lived on and cultivated the land. Except for the king and the villeins, each person occupied a dual position: he was the overlord to his tenant and a tenant to his overlord.

The land itself was considered as owing services to the lord, said services to be performed by the tenant. At the time the tenant received the land, the service due from his tenure was specified. Thus, as to the same land, one tenant might owe his overlord "knight service" or military service. In addition to the services, there were certain "incidents" due from all tenures, such as *homage* (a ceremonial pledge of personal loyalty) and *relief* (the payment of a sum by the heir of the tenant for the right to inherit—an ancient inheritance tax).

Land was power and wealth; the feudal system was more than a system of land ownership. As can readily be seen, it was a system of government, establishing an economic structure and a military organization. In absence of a centralized administration for the kingdom, discipline and order was effectively maintained through a series of lord-and-vassal relationships.

The relationship between the English Crown and the American colonies was essentially feudal. For example, according to the Maryland Charter, the feudal services due were the delivery of two Indian arrows on Tuesday of Easter week and one-fifth of all the gold and silver ore found within the boundaries of the land grant. After the revolution the feudal position of the English Crown presumably passed to the states. In some states, the concept of feudal tenure was abolished by statute or judicial decision. In a few, there is reason to assume that the technical concept of feudal tenure probably exists. As a practical matter, it appears safe to conclude that all states follow the allodial theory of land ownership. Under the allodial system, land can be held in absolute independence by the individual, owing no rent, service, or acknowledgement to the state as overlord. Of course, the state has jurisdiction over land within its

borders; the state has the right to tax the land for its support, to control its use in order to protect the health, safety and general welfare of the public, to take the land for public use under the right of eminent domain, and to take title to the land if the owner dies leaving no heirs and no will.

INTERESTS IN LAND

A unique concept of Anglo-American land law is that of "estates." The estate is the character of ownership which the individual has in the land and which determines the duration of his right of possession together with the right of use. If X owns property in fee simple and leases it to Y for ten years, both have interests in the property. Y has an estate for ten years, called an "estate for years." Y is entitled to exclusive possession and can assert this right against anyone, including X. Y must not abuse the property and his right of use is limited. X has the right to possesison at the end of ten years—a present right to future possession. We call X's interest a reversion in fee simple.

Estates are commonly classified as "freehold estates" or "non-freehold estates." The basis of this classification derives from the feudal system. Freehold estates were normal holdings under the feudal system; non-freehold estates appear to have begun primarily as a money-lender's device and did not have the dignity of feudal stature. The freehold estates are: (1) fee simple absolute, (2) defeasible fee (often called base fee, or qualified fee), (3) fee tail, and (4) life estate. The non-freehold estates are: (1) estate for years, (2) estate from period to period, (3) estate at will, and (4) estate at sufferance.

The law concerning interests in land is extremely technical and complex. The following discussion of this area of law is simplified and condensed.

1. Freehold Estates. a. *Fee simple absolute.* A fee simple absolute estate, often called a fee or a fee simple, is the most comprehensive ownership known to the law. A fee simple is often defined as the largest bundle of ownership rights possible, said ownership rights including the right to possess, use, enjoy, control, and dispose. Although the fee simple estate is the highest degree of ownership in land recognized by law, it is by no means absolute ownership such as one may have in a book. An individual's freedom of use of his fee simple title is subject to governmental and private limitations.

The four major governmental limitations on land generally listed by text writers are: (1) police power—the right of the government to impose reasonable limitations to protect and promote the health, safety and general welfare of the public; (2) eminent domain—the right of the government to take private property for public use upon payment of just compensa-

tion; (3) taxation—the governmental right to impose taxes for its own support and to proceed against the land for non-payment; and (4) escheat—the right of the government to acquire title to property owned by a person who dies without leaving a will or heirs at law.

Private limitations upon the use of land are usually classified as: (1) deed restrictions—the limitations on land use imposed by a grantor, such as requiring that all structures built upon the land must be of brick veneer; (2) mortgages—the security claim of the mortgagee upon the property prevents uses or changes that would injure the property value; (3) leases—the suspension of the fee owner's right to use and possession for a certain period of time; and (4) easements—the fee owner's use is limited in that he may not interfere with the rights of the easement holder. Governmental and private limitations upon land use apply equally to all types of estates in land.

b. *Defeasible fee.* A defeasible fee, often called a base fee or a qualified fee, is a fee simple subject to a special limitation, a condition subsequent, or an executory limitation.

A fee simple subject to a special limitation automatically terminates upon the happening of a specified event. Example: X, owner in fee simple absolute, conveys "to Y and his heirs so long as the land is used for church purposes." Y's interest is called a fee simple subject to a special limitation and it may last forever. But if the land ceases to be used for church purposes, Y's interest in the land automatically ceases and the property returns to the grantor, X, or his successors in interest.

A fee simple subject to a condition subsequent gives the grantor, or his successors in interest, the power to terminate the grantee's estate upon the happening of a specified event. Example: X, owner in fee simple absolute, conveys "to Y and his heirs but if liquor is sold on the premises conveyed, X shall have the right to re-enter for breach of said condition." Upon breach of the condition, Y's interest does not automatically terminate, but continues until X exercises his power of termination by re-entry.

Unlike the first two types of defeasible fees, a fee simple subject to an executory limitation does not return to the grantor but passes automatically to some other person upon the happening of a specified event. Example: X, owner in fee simple absolute, conveys "to Y and his heirs, but if Y dies without children surviving him at his death, then to Z and his heirs." If Y dies leaving no children, then Y's defeasible fee automatically terminates and the property passes to Z.

c. *Fee tail.* An estate in fee tail is primarily of historical interest. It was created by a conveyance reading: "to Y and the heirs of his body." Y could not convey the land, but the estate would continue so long as there were any lineal descendants of

Y. Upon failure of such descendants or issue, the land would revert automatically to the donor or his heirs. Because such estates have been deemed unsuited to American social conditions, fee tail estates appear to have been abolished or modified in all states. Some states, including Montana, provide that a conveyance which under the common law would have created a fee tail now conveys a fee simple absolute. (See Section 67-504, Revised Codes of Montana).

d. *Life estate.* An estate for life may be created by X, owner in fee simple, conveying "to Y for as long as he shall live." Such a conveyance entitled Y to the exclusive possession of the property and to its use or income as long as he lives. Upon Y's death the property returns to X or his successor in interest. Y may not make unreasonable use of the property or do anything which would decrease the value of X's reversionary interest.

Life estates in Y would also be created by conveyances reading: "to Y for life, then to X" or "to Y for as long as Z shall live, then to X." In the first case, upon the termination of Y's life estate the property passes to X or his heirs. In the second example Y's life estate is measured by another's life rather than his own—upon Z's death the property reverts to X.

According to the common law of England, and that of a few states today, there are two so-called "legal life estates" which are created automatically by law: dower and curtesy. Dower is a life interest in real estate given to the wife upon her husband's death, consisting of a one-third part of all the real estate owned by the husband during the marriage. A conveyance to another by the husband before his death does not destroy the wife's right. If the wife had joined her husband in conveying the property, she is held to have waived her dower rights. Curtesy is a life estate given to the husband upon his wife's death, consisting of a life interest in all the real property owned by his wife during the marriage, provided a child was born alive from their marriage. As in dower a conveyance by the wife does not terminate the husband's curtesy rights unless he joined in the conveyance and waived his right. Curtesy has been abolished in Montana, but dower still exists. (See Sections 22-101 and 36-131, Revised Codes of Montana).

2. *Non-freehold estates.* Non-freehold estates are commonly called leasehold interests. These interests are more fully discussed in the following section on *Leases* and will be only listed and defined here.

a. *Estate for years* (tenancy for years). An estate for years is one for a fixed period of time, whether for a day or 99 years. A conveyance from X "to Y for 10 years" creates an estate for years.

b. *Estate from period to period* (periodic tenancy). An estate

from period to period is usually created by implication and not by express provision. Such an estate arises where there is no definite agreed upon time or termination date but the rental period is fixed at so much per week, month or year. This estate is terminable by either party at the expiration of any rental period upon the giving of proper notice of termination.

c. *Estate at will* (tenancy at will). An estate at will is one which is, expressly or implied, terminable at the will of either party. Upon the giving of proper notice, either the tenant or landlord may cancel the estate at any time.

d. *Estate at sufferance* (tenancy at sufferance). An estate at sufferance arises when the tenant wrongfully holds over after the expiration of his term. The landlord has the choice of treating the holdover tenant as a trespasser and have him evicted or he may choose to accept such tenant for a similar term and under the conditions of the tenant's previous holding.

CONCURRENT INTERESTS

Although an estate or interest in land is probably more often owned by one person, it is possible that two or more persons may own real property concurrently or simultaneously. The two most important types of co-ownership are joint tenancy and tenancy in common.

1. *Joint Tenancy.* In a joint tenancy, all the co-owners are equally entitled to the use, enjoyment, control and possession of the land, or its equivalent in rents and profits. The most distinguishing characteristic of the joint tenancy is the *right of survivorship.* Upon the death of one of the joint tenants, his rights pass to the surviving tenant or tenants. Technically, death of a joint tenant does not affect the title to the property, since the title is vested in the group and not in the individuals. However, in Montana, a proceeding in court is necessary to terminate the joint tenancy and to determine the inheritance tax, which must be paid.

According to the common law, a joint tenancy was not created unless the "four unities" of time, title, interest, and possession existed. The joint tenants must have equal interest, acquired by the same deed, beginning at the same time, and entitling each to equal rights of possession. A conveyance from the owner to himself and his wife, could not, at the common law, create a joint tenancy. Since the owner had acquired his interest at an earlier time by a different deed, the unities of time and title were lacking. Today in Montana, such a deed can create a joint tenancy. (See Section 67-1602.1, Revised Codes of Montana).

As one author put it, there is nothing sacred about a joint tenancy. Any joint tenant can terminate the relationship. Some

of the events which will end the joint tenancy are: a conveyance or a contract to convey by one of the joint tenants, or an involuntary transfer as by foreclosure of a mortgage or tax sale. When a joint tenancy is terminated, either voluntarily or involuntarily, the co-owners then hold as tenants in common.

2. *Tenancy in Common.* A tenancy in common is a holding of an estate in land by two or more persons who need hold only by the unity of possession. As distinct from a joint tenancy, the tenants of a tenancy in common need to have the same proportionate share of interest, nor need their interest begin at the same time, nor derived out of the same conveyance. But each is entitled to the undivided possession of the property, according to his proportionate share and subject to the rights of possession of the other tenants. Upon death, the share of each tenant in common descends to his heirs or according to his will. There is no right of survivorship in this type of co-ownership.

INCORPOREAL INTERESTS

Generally speaking, incorporeal (intangible) property rights are those that cannot be seen or handled, but which exist in legal right, such as easements, licenses and covenants running with the land.

For example: B's right of way across A's farm is a form of an easement. If B pays A consideration for permission to hunt and fish, and permission is granted, B's right is called a license. If A sells his land to B and the deed contains an exception that certain of the land shall be used as a public park, such a covenant is said to "run with the land" and the land is thereafter burdened, even though B may later sell the land to C.

FUTURE INTERESTS

With respect to the time of their enjoyment, estates are classed as "in possession" or "in expectation," the former entitling the person to immediate possession, and the latter postponing enjoyment to some future day. Estates in expectancy are further divided into estates in remainder and estates in reversion.

Remainders and reversions are very similar. They differ mainly in the manner of their creation.

1. A *remainder* is an estate which will begin at a future day upon termination, by lapse of time or otherwise, of a prior estate which was created at the same time the remainder was created. For instance, if A grants land to B for 20 years and at the end of 20 years to C and his heirs, then B would be a tenant for years and C would get the remainder in fee.

2. A *reversion* may be defined as the residue or interest in an estate left in the donor, or his heirs, which will revert or return to him upon the termination of some preceding estate. Thus, if A conveys his estate to B for life with remainder to himself, A still retains the fee and upon B's death, A or his heirs will have the right to possession of the estate.

POSSESSOR'S RIGHTS

The ownership of land includes not only the ground and soil, but also everything which is attached to the earth (appurtenant) and everything under the surface or over it. Thus, in legal theory, a tract of land consists of more than just that portion of the surface of the earth, but is actually an inverted pyramid having its tip or apex at the center of the earth, extending outward through the surface of the earth at the boundary lines of the tract, and continuing upward to the heavens.

1. *Air Rights.* With the advent of the airplane, common sense revolted at the notion that the mere flight of aircraft at high altitudes over one's land was a trespass. Only when the flight is low and interferes with full enjoyment of the land can the landowner complain.

2. *Appurtenances.* A thing is appurtenant (a part of) land when it is attached to it or when it is by right used with the land for its benefit, and this includes a passage for right of way, light, air or heat from or across the land of another. (See Sections 67-211 and 67-415, Revised Codes of Montana).

3. *Oil and Gas.* Landowners usually lack the skill, experience capital and gambling instinct necessary to drill for oil. When the presence of oil is suspected, therefore, a landowner generally gives some speculator an oil lease. Normally, such a lease terminates automatically if drilling is not begun before a certain date; however, most such leases contain a delay rental clause where, upon periodic payment of an agreed amount by the speculator, he can keep the lease alive even though he has not begun drilling. Royalty agreements compensate the landowner in the event a well is drilled and oil is produced.

4. *Minerals.* Since land extends to the center of the earth, the landowner owns the minerals which are a part of his land. (See Section 67-208, Revised Codes of Montana). When the land is sold, the buyer ordinarily acquires these minerals unless they are expressly excepted in the deed. Thus, a landowner may sell the minerals only (a mineral rights deed), retaining title to the surface of the land, or he may convey the surface of the land and reserve the mineral rights to himself.

5. *Trees and Crops.* Trees, plants and other things growing

on the land are divided into two classes: (1) Things which do not require cultivation (fructus naturales) and (2) annual crops produced by labor (fructus industriales). Growing crops are usually treated as personal property and may be sold as other chattels, and, further, a security agreement (personal property encumbrance) may be given on such property. In some instances, an oral sale of such personal property is permissible. A buyer should specifically inquire about the title to personal property which does not appear as of record, and require a bill of sale from the seller.

6. *Adverse Possession.* If A goes upon land owned by B and maintains possession of B's land in a hostile, actual, notorious, exclusive and continuous manner, under color of title, and, further, pays the taxes assessed against the land, and if he so possesses B's land for five consecutive years, A will have acquired title to the land, even though he has no deed to it. More correctly stated, the law will not permit B to bring an action to establish his ownership and title to the land after he has ignored and made no attempt to stop B from using it adversely for more than 5 years. The person who sleeps on his property rights will soon find that he has no rights.

Perhaps the most common claim of adverse possession is found in boundary disputes where an adjacent owner builds a fence on what he claims is his property line. After five years, his adverse possession will ripen into the right of possession, sometimes called a prescriptive right, even though the fence was actually built on his neighbor's land. The same rule is true where a building encroaches over and upon adjoining land, or a person drives across his neighbor's property for the five-year prescriptive period.

LIMITATIONS ON PRIVATE PROPERTY

The ownership or use of land may be limited or controlled in some situations through exercise by government of its police powers.

Thus, in order to protect the health, welfare and morals of the general public, various governments can enact statutes or codes or ordinances, setting minimum standards of use of land—such as zoning ordinances, subdivision limitations and building codes.

1. *Zoning Ordinance.* By dividing a city or county into zones and forbidding certain uses to certain zones, a zoning ordinance regulates the use that may be made of each parcel of land in the area—such as residential use, commercial use or manufacturing use. Only residences are permitted in residential zones, and most zoning ordinances further define the type of residences which are permitted.

A multitude of other restrictions, such as minimum lot size, frontage and set-back, and building area and height are also contained in most zoning laws. One of the first investigations to be made in the exchange of real property concerns the zoning restrictions imposed on the land, if any.

2. *Nuisances.* Anything injurious to health, or which is indecent or offensive to the senses, or an obstruction to the free use of property is a nuisance. (See Section 57-101, Revised Codes of Montana). Nuisances are of two kinds—(1) public and (2) private. A public nuisance is one which affects an entire community or neighborhood, or a considerable number of persons. All other nuisances are private. The nuisance limitation upon the ownership of land simply means that the owner of land cannot use his property without reasonable consideration of the rights of others in his area.

3. *Subdivisions.* Limitations upon the use of land can also be imposed in the creation of a subdivision. After a development plan has been worked out, the lots, parks, streets and alleys into which the land is to be divided should be staked out on the land and permanent monuments should be placed at the corners of the subdivision. Thereafter, a plat must be made of the subdivision. The plat must then be approved by local authorities and recorded. Whoever purchases land within the subdivision will thereafter be limited to the conditions, covenants and designs of the subdivision, as shown on the recorded plat or on a separate document stating restrictive covenants.

4. *Eminent Domain—Condemnation of Land.* When land is needed for some public use, it can be acquired by the exercise of the power of eminent domain. The power of eminent domain is exercised (1) by the United States, a state, city, town or school board or other public body, and (2) by quasi-public corporations, such as railroads and public utilities. The acquisition of land through eminent domain, however, is subject to two conditions: (1) The use to which the property is to be devoted must be a necessary public one; and (2) just compensation must be paid to the owner.

Exercise of the power of eminent domain involves a condemnation proceeding in Court. The just compensation to which the landowner is entitled is the fair market value of the land at the time of the taking. Often it is necessary, where the parties cannot agree, to have the amount determined by a jury.

By condemnation, the condemnor acquires either an easement or fee simple title as is necessary for the public use. As a rule, an easement only is acquired by those who need only a non-exclusive right of way, such as a telephone or power company, or even a drainage or irrigation ditch company. In such cases, even though the landowner receives full market value of

the encumbrances imposed, he retains title to the condemned land and in the event of abandonment the owner gets back his title free of the condemnation encumbrances.

5. *Taxes.* General taxes are levied by various taxing bodies, such as the state, county, city, town and school district to raise revenue needed for the performance of various public functions. Taxing real estate is one of the most common sources of revenue. Taxes are based upon property value and the assigned mill levy. The mill levy is set at an amount necessary to bring the required revenue when applied to all real property in the county. Assessment is determination of the true value of each parcel of land to be taxed. Each parcel of land is assessed in the name of the owner. Various factors, such as the market value of similar land, income, reproduction cost of buildings, depreciation and obsolescence must be considered in determining the value of the land. Thirty per cent of the assessed value is the taxable value of real estate in Montana. The amount of the tax is computed by multiplying the taxable value of the tract by the mill levy applicable in that particular taxing district. Tax laws usually provide that real estate taxes are a lien on the land, and eventually, if the taxes are not paid, the land will be sold in satisfaction of the taxes at a county tax sale.

DOWER AND HOMESTEAD

1. *Dower* is the interest in the real estate of the husband which the law gives to the widow to provide her with a means of support after her husband's death. (See Section 22-101, Revised Codes of Montana). During the husband's lifetime, the wife's rights consist merely in the possibility that she may become entitled to her dower. Until the death of the husband, the wife's right is said to be inchoate. It can only be released to a purchaser by the wife joining in her husband's conveyance. In Montana, any property in which the husband has a fee interest, whether acquired by purchase or inheritance, is subject to the inchoate dower interest in the wife. Upon the death of the husband, the dower right becomes accrued. The husband, however, has no curtesy interest (the opposite of dower) in the separate property of the wife in Montana.

2. *Homestead.* When a family owns and occupies a tract of land as its home, that portion of the tract which does not exceed the value limit fixed by statute, which in Montana is $7,500.00, is the family homestead. (See Section 33-124, Revised Codes of Montana). After a Declaration of Homestead has been recorded, the homestead portion of the land is protected against execution sales after judgment of a court except where otherwise provided by statute as in the case of mortgages and mechanics' liens. (See Section 33-105, Revised Codes of Montana).

Section IV

Land Description

While commonly the location of land is referred to by street numbers and city or by reference to the "Wheeler Farm," or the "Old Taylor Place," it is necessary to use the legal description in the preparation of those instruments relating to the title and use of real estate.

Numerous methods or types of descriptions have been developed for the purpose of achieving greater accuracy and precision in identifying the land. The more common methods of land description are: (1) the *United States governmental survey system*, often referred to as the "rectangular survey system," (2) *metes and bounds*, (3) *monuments* and (4) *recorded plat.*

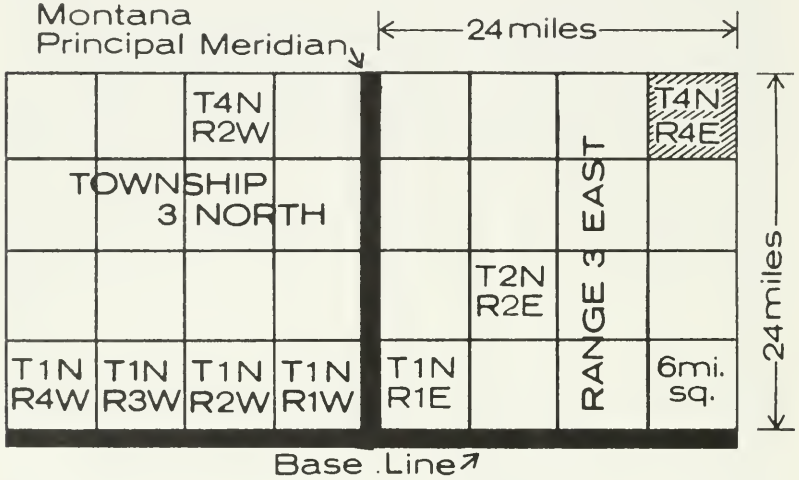
1. The object of the *governmental survey* was to create a checker board of identical squares covering a given area. The largest squares measure 24 miles on each side and are called "checks" or "tracts." Each check is further divided into 16 squares called "townships" whose four boundaries each measure six miles. The columns of townships running north and south are called "ranges" and are numbered according to their distance from the principal meridian (the main north-south survey line). The Montana Principal Meridian from which all ranges are measured in Montana runs north and south through Winston, just east of Helena. The rows of townships running east and west are called tiers or townships and are numbered according to their distance from the baseline (the main east-west survey line). In Montana, the main baseline follows a course east and west through the city of Billings. The principal Meridian and the baseline intersect in Gallatin County.

Because of the curvature of the earth, the north-south lines of ranges converge as they extend toward the north pole. To keep the range lines as nearly six miles apart as possible, the lines are laid out for approximately 24 miles, and then jog so that they are again six miles apart, to preserve as nearly as may be the square shape of the townships. The irregular shaped areas created in the correction are referred to as lots and are approximately forty acres in size.

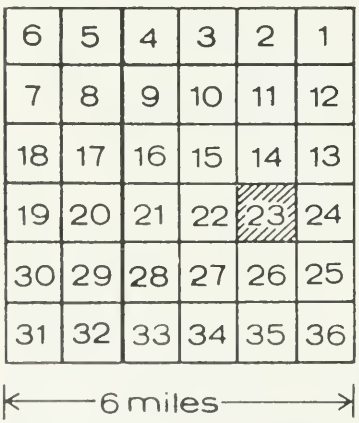
A township is six miles square or 36 square miles. Each square mile is designated as a section which is equivalent to 640 acres. Sections within a township are numbered from the northeast corner, following a back and forth course, until the last section in the southeast corner is reached. For purposes of land description, sections are commonly divided into half-sec-

tions containing 320 acres, quarter sections containing 160 acres, etc. Land acreage descriptions are then, for example, made by referring to a particular quarter of a particular quarter of a particular section located within a particular township, county and state.

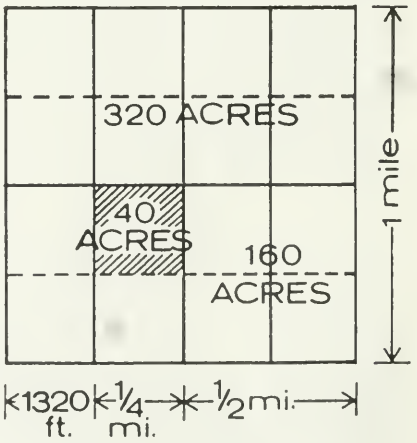
The following charts illustrate the preceding paragraph. The "shaded" portion of the subdivision of a section, being a part of Section 23 (shaded), located in Township 4 North and Range 4 East (shaded), would be legally described as thus: NE¼ of the SW¼ of Section 23, Township (or tier) 4 North, Range 4 East of the Montana Principal Meridian, County of Gallatin, State of Montana.



Subdivision of a Check



Subdivision of Township 4 North, Range 4 East.



Subdivision of Section 23.

2. *Metes* are measures of length and *bounds* are boundaries. A metes and bounds description locates the land with reference to permanent objects or locations which are part of the boundaries. The description starts with a well-marked points of beginning and follows the boundaries of the land until it returns once more to the point of beginning. An example of such a description would be: "Beginning at a point on the East side of Rodney Street, 150 feet South of the Southeast corner formed by the intersection of Rodney Street and Sixth Avenue; thence East on a line parallel to the south line of Sixth Avenue 120 feet to the West line of an alley; thence South along the West line of said alley 75 feet; thence West on a line parallel to the South line of Sixth Avenue 120 feet to the East line of Rodney Street; thence North along the East line of Rodney Street 75 feet to the point of beginning, said property being located in the City of Helena, County of Lewis and Clark, and State of Montana."

A description that is closely related and practically indistinguishable from a metes and bounds description is one by courses and distances. This description gives a starting point and the direction and lengths of lines to be run, usually omitting reference to boundaries thusly, "thence south 1° 25′ East, a distance of 75.12 feet," rather than "thence south along the west line of said alley 75 feet more or less."

3. *Monuments*, both natural (trees, streams) and artificial (fence, street), are usually a part of descriptions by metes and bounds. Although rarely seen, a tract may be described by use of monuments primarily: "Beginning at the southeast corner fence post of the property of John Q. Public, thence south to the old oak tree, thence to the large boulder on the near bank of Dry Creek, thence north to the bridge across Dry Creek, thence to the point of beginning, said property being situated in the County of Lewis and Clark, and State of Montana." Such descriptions should be avoided because such landmarks are not permanent and the property may be difficult to locate at a later date.

4. *Recorded Plat.* A tract of land may be subdivided into blocks and lots, with proposed streets, alleys, parks and such other information that the owner desires or is required to include as part of the plan. A map is made, called a plat, identifying each lot by a number within a block and showing its boundaries and measurements. Generally, this map is then recorded in the office of the county clerk and recorder. A lot of a platted track can thereafter be conveyed by a simple description referring to the plat, thus, "Lot 17, Block 37, of the Lenox Addition to the City of Helena, County of Lewis and Clark, State of Montana, as said lot and block are numbered, designated and described on the plat of said addition on file and of record in the office of the County Clerk and Recorder of said County of Lewis and Clark."

The phrase "legal description" usually is used to refer to one of the above types of land description. Any description is legal and valid if it unquestionably identifies the property. The above kinds of description are more precise and accurate than informal description, such as street addresses.

MEASUREMENTS IN GENERAL USE

16.5 feet make 1 rod
320 rods make 1 mile
5,280 feet make 1 mile
160 square rods make 1 acre
208.7 feet (approx.) on each side make 1 square mile
43,560 square feet make 1 acre
1 square mile makes 1 section
640 acres make 1 section
36 square miles (sections) make 1 township
9 square feet make 1 square yard
27 cubic feet make 1 cubic yard
1,728 cubic inches make 1 cubic foot
60 geographical miles make 1 degree.

Section V

Contracts

GENERAL

Of all legal instruments, contracts are one of the most important to our society and economic system. The stability and security of our business world are dependent upon the law of contracts. It insures the performance of the parties to their agreements by requiring that they either perform or pay for all loss or damage caused by non-performance. Furthermore, the specialized branches of business law—such as agency, sale of goods, negotiable instruments, partnerships and corporations—are all founded upon the law of contracts.

A contract may be defined as *an agreement between two or more competent persons, having for its purpose a legal object, wherein the parties agree to act in a certain manner.*

ESSENTIAL ELEMENTS OF A CONTRACT

To be binding and enforceable at law, *all* contracts must have four essential elements: (1) mutual assent, (2) consideration, (3) competent parties and (4) legal purpose.

1. *Mutual Assent.* Before a valid contract can exist, the parties must mutually consent to be bound by the terms of the agreement. Such mutual assent is evidenced or objectively set forth by the *offer* and *acceptance.* If the consent was obtained by fraud, misrepresentation, duress, undue influence, or mistake, then there is no real consent and therefore, the element of mutual assent is absent. In certain cases the law requires that the expression of the parties' mutual agreement must be in writing to be enforceable.

a. *Offer.* An offer is a promise by one party to act in a certain manner provided the other party will act in the manner requested. The one making the offer is called the *offeror*; the one to whom the offer is made is called the *offeree.*

If a person says, "I'll give you $20 for that tire," he is making an offer. He is saying, essentially, "I promise to pay you $20 if you will deliver to me the ownership and possession of the tire." Similarly, when a prospective buyer of real estate signs a "contract" to purchase property, he is making an offer to the seller to buy the property on stated terms and conditions. No contract exists until the seller agrees.

To be effective, an offer first must be communicated to the offeree by a means selected by the offeror. Secondly, the offer must be intended as such. Whether it is intended as an offer depends, not on the offeror's subjective mental attitude, but on the reasonable interpretation given to the communication by the offeree. Expressions made in jest, anger, or excitement are generally not offers because the hearer should realize that the speaker is not, at the moment, seriously contemplating what he is saying. Thirdly, an offer to be effective must be definite and certain as to its terms. If the offer is indefinite as to some of its terms, no meeting of the minds can occur because reasonable persons could disagree as to the interpretation of the indefinite provisions.

How long does an offer last—when does it cease? An offer can be terminated by a *lapse of time*, by *revocation*, by *rejection*, or by *operation of law*.

The offer may specify the length of time it is to remain in effect. Upon expiration of that time, the offer ends. If no time is specified, then the offer terminates upon the expiration of a reasonable length of time. Reasonable time is determined by all surrounding circumstances; for instance, it is less in the case of an offer to sell perishable goods than for non-perishable goods.

The offeror may revoke, cancel, or withdraw his offer at any time before acceptance, even if he may have stated that he would hold the offer open for a certain period. Thus A may offer to sell or buy certain goods, telling B that he has ten days in which to accept. Two days later, if B has not accepted, A may cancel his offer without liability to B. When an *option* exists A cannot withdraw his offer without liability. An option is a subsidiary *contract* to hold open an offer for a stated period of time. Many so-called options are not enforceable because consideration (something of legal value) has not been given in return for the option. In the above example, if B had paid or promised to pay A ten dollars for the privilege of having ten days in which to decide, then there would be an option and A could not withdraw his offer during that time.

An offer is terminated by rejection or refusal of the offeree. If the offeree agrees to accept the offeror's proposal but on different terms, this is called a counter-offer and constitutes a rejection of the original offer.

Offers can be terminated automatically by operation of law. Generally, the death or incapacity of either the offeror or offeree ends the offer. Destruction of the subject matter of the offer or a change of law making the object of the offer illegal will also terminate the offer.

b. *Acceptance.* The second step in achieving mutual assent is the acceptance—the indication by the offeree that he is willing to be bound by the terms of the offer. In a real estate trans-

action, this is usually accomplished by the seller signing the offer to purchase made by the buyer.

To be effective, an acceptance must be made and communicated according to the manner, time, place, and terms specified in the offer. If there are no such specifications, then the acceptance must be made and communicated in a reasonable fashion, according to the custom and usage of the trade in that locality.

c. *Meeting of the Minds.* For mutual assent to exist, consent must be given knowingly and voluntarily. If a party gives his consent due to fraud, misrepresentation, undue influence, duress or mistake, it would be unfair to hold him to the agreement. Therefore, when consent is obtained under the above circumstances, the courts usually hold that there is no contract, or permit the innocent party to cancel the contract.

When there is a *mutual mistake* as to a material fact concerning the *identity* or *existence* of the subject matter, either party may rescind the contract. But when the mistake concerns an unessential fact, or relates to the value, or is made by only one party due to that party's carelessness, an enforceable contract will result. Thus, if the parties agree to buy and sell property at a certain address and there are two properties having the same address and each party has in mind a different property, no contract results. But if one party has a mistaken belief as to the value of a piece of property, a good contract will result.

Many statements are made by each party in the course of a sale of land and occasionally some untrue statement is made, called a *misrepresentation.* If the misrepresentation is about some unimportant or trivial matter, it will be considered immaterial and will not affect the validity of the contract. If the misrepresentation concerns a substantial matter, however, the contract may be voided on grounds of fraud.

"Puffing" is a praise of the property by the seller couched in more or less general terms. Generally, the law requires the buyer to be wary of such puffing talk. Unwarranted praise that does not include concrete misrepresentations of specific fact, and which is mere opinion, does not amount to fraud and does not entitle the buyer to void the sale.

In Montana, *fraud* is either actual or constructive. (See Section 13-307, Revised Codes of Montana). Actual fraud, when committed by a party to the contract, is committed with intent to deceive another party thereto and induce him to enter into the contract. (See Section 13-308, Revised Codes of Montana).

The essential elements of fraud, where a contract of sale is concerned, are:

1. A false representation (can be mere silence under certain circumstances).

2. Its materiality to the matters of the sale.

3. The seller's knowledge of its falsity or his ignorance of its truth.

4. The seller's intent that his statement be acted or relied upon by the buyer.

5. The buyer's ignorance of its falsity.

6. The buyer's actual reliance upon its truth.

7. The buyer's consequent and proximate damage.

Actual fraud is always a question of fact (See Section 13-310, Revised Codes of Montana), even when silence or nondisclosure is the basis of the fraud. For centuries, the law has been *caveat emptor*—"Let the buyer beware." In other words, the buyer must investigate before buying, but if he fails to discover defects in the property, that is his tough luck. However, the courts are getting away from this primitive rule. Recent decisions say that when the seller knows of certain material facts, and knows them not to be within the reach of a reasonable inspection by the buyer, then the seller is bound to disclose such factors to the buyer. Examples of material facts which the seller is bound to disclose, if known to him, are extensive termite damage, weakened or cracked foundations which are concealed or covered and not easily discoverable, and occasional flooding conditions.

Upon discovery of fraud, the buyer must act quickly to preserve his remedies. He may elect to rescind the contract, which means that he must return the property to the seller and the seller must return the consideration paid to the buyer, and thereafter the contract is terminated, or the buyer may elect to enforce the contract and sue the seller for damages proximately caused by the fraud.

A contract is not free when obtained through *duress*. Duress consists of any act tending to coerce the will of another and actually inducing him to do an act contrary to his free will.

d. *Statute of Frauds.* To prevent fraud through perjury, the law requires that the parties' agreement evidencing their mutual assent *must be in writing in certain cases.* (See Section 13-606, Revised Codes of Montana). The instances in which we are here concerned are agreements (1) for the sale of land or an interest therein, (2) to answer for another's debt, (3) to lease for a period longer than one year, (4) agreements that cannot be performed within one year, and (5) *agreements authorizing or employing an agent or broker to purchase or sell real estate for compensation or commission.* In some cases, the law permits certain limited exceptions to the written contract, but the wise broker or salesman will rely upon written evidence of agreement.

2. *Consideration.* Agreement alone does not make an enforceable contract. There must be consideration supporting the agreement. Many persons confuse money with the requirement of contract consideration; but in many cases, the consideration for a promise is the return promise. The promise of the purchaser to buy and the promise of the owner to sell constitute sufficient consideration to support their agreement—no earnest money is necessary.

Consideration may be defined as *a promise or an act of legal value bargained for and received in return for a promise.* Both parties must receive consideration for their promises. *Legal value* is generally defined in terms of *benefit or detriment.* Thus, legal value is present if (1) the one making the promise (or doing an act) thereby agrees to do, or does, something, he was not previously obligated to do *(detriment)*, or (2) the one receiving the promise (or act) thereby becomes entitled to, or receives, something he was not previously entitled to *(benefit)*. Usually both parties to an agreement each receive some benefit and suffer some detriment. Sometimes the detriment or benefit is payment of cash.

When A agrees to buy and B agrees to sell, each is agreeing to do something he is not obligated to do and each will receive something he is not entitled to. But if A tells B a policeman investigating a robbery, that he, A, will pay B $1,000.00 reward for the recovery of A's stolen property, there can be no consideration for A's promise. In recovering, or promising to recover, the stolen property, B, the policeman, is doing no more than he is already bound to do. A promise given without any return does not make a binding contract. Each party must in some way give legal value for what he receives.

In the early days of the English law, a seal (a mark or imprint applied to wax on the paper or on the paper directly) took the place of consideration. The seal gave formal authority to the contract and became the guarantee of its fulfillment. Although we still see vestiges of this practice on many legal documents, a seal is generally not required. (See Section 13-612, Revised Codes of Montana). The use of the seal appears today to be required primarily for certain acts of governmental agencies and corporations.

Although the promise to pay for land, if written in the contract, is good consideration, the purchaser is usually requested to show his good faith by making a partial payment on the purchase price. This partial payment is called "earnest money" or "good faith money." It is a good indication that the purchaser will perform his promise to pay for the land because if he does not, he will lose the money according to the default provisions of the contract.

3. *Competent Parties.* All parties are presumed to have the legal capacity to enter into contracts. But certain persons for

reasons of public policy or some disability, do not have full contractual capacity.

a. In Montana, a minor is a male who is under 21 years of age, or a female under 18 years of age. (See Section 64-101, Revised Codes of Montana). A minor may make a contract in the same manner as any other person, but such a contract is subject to his power of disaffirmance. (See Section 64-106, Revised Codes of Montana). The contract of a minor may be disaffirmed by the minor himself after the consideration for the contract has been restored to the party from whom it was received at any time before majority of the minor, or within a reasonable time afterwards, or in the case of his death within that period, by his heirs or personal representatives. (See Section 64-107, Revised Codes of Montana). The minor is given this right to protect him against his lack of experience, judgment and ability. The burden is upon the adult to ascertain that the person he deals with is of legal age. If, after reaching majority, a person ratifies or approves of a contract executed as a minor, he will no longer have a power of disaffirmance.

b. Insane persons are given the same protection as that given to minors, except that the contracts of a person that has previously been judicially declared insane never can have any effect. A person entirely without understanding has no power to make a contract of any kind. (See Section 64-110, Revised Codes of Montana). A contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission. (See Section 64-111, Revised Codes of Montana).

c. The contract of an intoxicated person is usually binding, except where that person is so intoxicated that he is incapable of understanding the nature of the transaction. In that case, the intoxicated person may cancel or ratify the contract.

d. A corporation's contractual ability is determined by its charter. Its capacity to contract may be related only to specific things or it may be related to broad areas of business transactions. It acts through its officers who are duly authorized by the stockholders or members and the directors.

e. A married woman may convey her separately owned property without her husband's signature on the deed. A wife's inchoate dower interest in her husband's real property, however, is not defeated unless she has signed the deed along with her husband at the time of conveyance.

f. All real property originally brought into a partnership, or subsequently acquired on account of the partnership, is partnership property. (See Section 63-108, Revised Codes of Mon-

tana). Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name, but such property may be recovered by the partnership should the partner have no authority to convey partnership property. If possible, all partners should sign partnership conveyances in the name of the partnership. An unincorporated association is basically a partnership.

g. An attorney-in-fact may execute a conveyance for his principal. The written authority and power delegated to a personal representative or attorney-in-fact must be examined in order to determine the exact authority of such a person and must be recorded for permanent reference.

4. *Legal Purpose.* A contract to be valid and enforceable must have for its purpose a legal object. Its object must not violate the laws of the United States, or the laws of the state to which the parties are subject. An agreement to commit a crime, a tort, or which is contrary to the general public welfare is illegal. For example, an agreement to defraud someone, or to slander a person, or to operate a house of ill repute is illegal. More generally stated, anything which is (1) contrary to an express law, (2) contrary to the policy of express law, though not expressly prohibited, or (3) otherwise contrary to good morals, is unlawful. (See Section 13-801, Revised Codes of Montana).

Furthermore, all contracts which attempt to exempt anyone from responsibility for his own fraud, or for willful injury to the person or property of another, or for his own negligence, are against the policy of the law. Such contracts are void. Other contracts, such as those attempting to fix in advance the amount of damages to be paid in the event of default, are often to that extent void, although the remainder of the contract may be binding. For example, in Montana, a broker or salesman must hold a valid license at the time he is hired to perform the services for which he claims a commission. The rule that unlicensed persons cannot recover a commission is applied quite strictly. Thus, if it can be shown that a broker was unlicensed when he performed the services called for in a listing with a client, the broker will be unable to collect a commission and the listing agreement, therefore, is void.

MATTERS TO BE CONSIDERED IN REAL ESTATE CONTRACTS

The contract of sale is the most important document in a real estate transaction. To name but a few reasons, the contract determines the kind of title to be conveyed, the type of deed, the liens and encumbrances that the land will be sold subject to, and the manner of payment of the purchase price.

The preparation of the contract of sale requires special legal skill and the services of an attorney should be obtained. The drafting of such contracts is considered the practice of law, and a real estate broker can find himself in serious trouble trying to interpret law of contracts and real estate in drafting such contracts. Aside from the illegality of such practice, errors which occur because of the lack of professional legal knowledge are often interpreted to be acts of dishonesty and wrongdoing. Nevertheless, the broker and salesman must understand the matters generally contained in such contracts so that they can fill out the standard form Receipt and Agreement to Sell and Purchase (see page 142) to bind the parties until an attorney can be consulted.

The following are the main items to be considered in discussing real estate contracts. The list is not intended to be exhaustive; seldom are two real estate transactions alike.

1. *Names and Signatures of the Parties.* The seller and buyer must be named in the contract and be properly designated as to which is the seller (vendor) and buyer (vendee or purchaser). If the property is owned by two or more persons, all should be named and all should sign—unless, of course, only one is selling his interest. If the property is being bought by two or more purchasers, all should be named and should sign, together with a designation as to whether they are buying as joint tenants or as tenants in common.

2. *Sale Price and Payment Provisions.* The contract is incomplete and unenforceable unless it contains the sale price. If there is no provision as to the method of payment, the law presumes it to be a cash sale. The contract should state, when applicable, the amount of the earnest money, the amount to be paid at closing, the method of payment of the balance if by assumption of the existing mortgage or new mortgage, and any and all other pertinent financial provisions.

3. *Description of Property.* The description of the real estate should be sufficiently definite to identify the land sold with reasonable certainty. Although the street address is often a helpful reference, the legal description must be contained in the seller's deed. Even though the contract may not mention them, such additional rights to the land as water rights, easements, rights of way and other appurtenances belonging to the land, will automatically pass to the buyer in the transfer of ownership. For the sake of clarity and completeness they should be mentioned in the contract. In addition, all items of personal property to be included in the sale should be listed.

4. *Type of Deed.* The contract should provide for the type of deed by which the property will be conveyed, whether by quit-claim, general warranty, or other kind of deed. In the

event the type of deed is not stated, the courts will probably require that kind of deed which is customary to that kind of transaction in that locality.

5. *Merchantable Title.* The contract usually provides that the title is to be merchantable, that is, free from defects and which a reasonably prudent buyer is willing to accept. Even without this provision, the law presumes that a merchantable title is to be conveyed. Mortgages, tax liens and other liens and encumbrances are considered to be defects. Therefore, if the property is to be conveyed subject to a mortgage or other encumbrance or restriction, the contract should clearly state so. Another customary provision states that the purchaser will give written notice of defects of title, not excepted in the contract, and that the seller will be given a certain period of time in which to clear up said defects.

The seller has the duty of proving that his title is good. The contract should provide that the owner will establish his title by furnishing evidence of his ownership, such as an abstract of title or a title insurance commitment.

6. *Default Provisions.* The rights of the parties should be stated in the event that one side fails to perform. The law, of course, gives the parties remedies for non-performance, but a lawsuit can be avoided if the parties will mutually agree to a settlement beforehand. Therefore, provisions should be made as to the disposition of the buyer's deposit if he should default, and any other arrangements deemed appropriate.

7. *Contingent Provisions.* The purchaser may be willing to buy, but in order to do so he might have to accomplish something beforehand, such as borrowing additional money or sell his present property. In such cases, the offer to purchase should clearly state such conditions. It is possible that the seller may also wish to provide for some contingency.

8. *Possession.* The time of closing the transaction and time that possession of the premises is to be given to the buyer may not be the same. To prevent possible misunderstanding, the date of possession should be stated.

9. *Apportionment* or *Adjustment.* The contract should provide for the apportionment of all charges or assets concerning the property—such as taxes, assessments, water rents, interest on assumed encumbrances, insurance, rents.

10. *Risk of Loss.* If, after the contract is signed but before the deed is delivered, the property is damaged or destroyed by fire, flood or storm, who suffers the loss—the seller or the buyer? The answer is not as simple as it seems.

Ordinarily in most jurisdictions, when a binding real estate contract exists, and where specific performance may be enforced by either party the buyer is considered to be the owner of the property and the loss falls upon him. Although he does not have legal title, the buyer is said to have the equitable title. The buyer can legally force the seller to convey the legal title to him. Also, the seller can force the buyer to accept the legal title and perform his part. This right is called *specific performance*; the parties lose this right only if they waive it in the contract.

Many courts, though following the theory of equitable title, say it is unjust to put the burden of loss on the buyer because, not being in possession, he is unable to protect his interest. But the majority of courts seem to hold that the loss falls on the buyer *unless* the contract provides to the contrary. When possession does not pass to the buyer immediately, the contract of sale should provide that the risk of loss remains with the seller until possession does pass.

The law generally will not supply omitted provisions nor permit oral evidence of the parties to supply them. Therefore, the contract must be written carefully and thoroughly.

ASSIGNMENT OF CONTRACT

Under the terms of a contract to purchase real property, the buyer has the right to demand a deed to the property upon performance of his part of the contract. He may sell and transfer his rights under the contract to a third party by means of an instrument called an assignment unless the contract specifically limits this privilege. Sometimes the contract provides that assignment by the buyer can only be made upon the written consent of the seller and such provision is enforceable. The person transferring his interest is called the assignor. The assignee has the right to make the payments required by the contract and to demand a deed from the seller when the contract is fully performed. In other words, the assignee steps into the shoes of the buyer and may compel the seller to perform his part of the contract after the assignee has performed the obligations imposed upon the original buyer. If the contract is in escrow, another deed from the assignor to the assignee must be placed in escrow for delivery upon full performance by the assignee.

It must be remembered, of course, that a buyer does not escape personal liability by assigning his contract to a third party unless the seller consents or accepts to the assignment. Without the seller's acceptance, the buyer remains liable to the seller under the terms of the agreement, notwithstanding the assignment.

A seller may also assign his interests in a contract. Suppose that S enters into an installment contract to sell land to B. Before the final payment is due, S is pressed for funds and

decides to sell out to X. S may assign the contract to X, and X must then notify B of the assignment so that B will make all further payments to X. Since X must be in a position to convey the land to B upon completion of the installment contract, X must obtain a deed from S at the time of the assignment. If the contract be in escrow, a deed from the assignor-seller to the assignee must be placed in escrow so that the assignee can obtain title upon default of the buyer.

DISCHARGE OF CONTRACTUAL OBLIGATIONS

1. *Conditions.* A contractual obligation is conditional when the rights or duties of any party to the contract depend upon the occurrence of an uncertain event. Such conditions may be precedent, concurrent or subsequent.

a. *Condition Precedent.* A condition precedent is a condition which must occur *before* some right ripens, or before some act must be performed. In other words, the occurrence makes the contract effective and binding upon the parties. An example is a clause in a sales contract requiring the buyer to obtain sufficient financing. If the buyer does not first obtain sufficient financing, the contract is not binding.

b. *Condition Concurrent.* A condition concurrent is a condition mutually dependent upon another condition being performed at the same time. The obligation to deliver title to real estate is concurrent with the obligation to pay the full purchase price.

c. *Condition Subsequent.* A condition subsequent is a condition occurring after a binding contractual relationship which causes the contract to be no longer binding upon one or both of the parties, if such party or parties choose to enjoy the operation of the condition. Such a condition affects an estate already created and vested, rendering it liable to be defeated. The condition that liquor shall not be sold on the premises conveyed is a condition subsequent, and if at some later time liquor is sold, the contract of sale is no longer binding upon the seller if he chooses to enforce this condition.

d. *Performance.* Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself, and he must also be able to, and offer to, fulfill all conditions concurrent imposed upon him.

2. *Alteration of Contracts.* A written contract can be altered only (1) by a subsequent contract in writing, or (2) by an oral agreement which has been executed.

REMEDIES FOR BREACH OF CONTRACT

1. *Damages.* For the breach of an obligation arising from contract, the measure of damages is, generally, the amount of money which will compensate the party aggrieved for all the detriment proximately caused by the breach. If both parties breach their contractual obligations, and one sues the other, the damages claimed by the plaintiff will be reduced by the damages suffered by the defendant. No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin. Speculative damages are not permissible.

2. *Rescission.* A contract is extinguished by rescission, but a contract may be rescinded only in the following cases:

a. If consent was given by mistake, or obtained through fraud, duress, menace or undue influence.

b. If one party's consideration fails due to the fault of the other party.

c. If the consideration becomes entirely void from any cause.

d. By the consent of all the other parties to the contract.

Except where rescission occurs through consent, such remedy can only be accomplished where the rescinding party has acted promptly, and after he has restored to the other party everything of value which he has received from such other party under the contract, or, at least, offered to so restore everything received.

3. *Cancellation.* The destruction or cancellation of a written contract, or of the signature of the parties liable, with the *intent* to extinguish the obligation thereof, extinguishes it as to all the parties consenting to such act. The intentional destruction, cancellation, or material alteration of a written contract by a party entitled to any benefit under it, or with his consent, extinguishes all executory obligations of the contract in his favor against parties who were required to perform.

4. *Specific Performance.* Once a binding real estate contract has been signed, either party to the contract can compel the other party to perform. In other words, the buyer may compel the seller to give him a deed at the moment he has paid to the seller the agreed price for the property.

5. *Forfeiture.* Forfeiture is a remedy reserved to the seller in a real estate contract. Forfeiture is different from rescission, since, in the latter case, both the buyer and the seller must be restored, as far as possible, to the situation existing before the contract was made—i.e., the seller gives back to the buyer the

payments he has made, and the seller takes back his property. By declaring a forfeiture, however, the seller terminates the contract, but retains all payments previously made by the buyer. The right of forfeiture must be expressly conferred by a written contract and exercised only after notice of default properly given as therein provided.

OPTIONS

A valid contract of sale is binding on both seller and buyer. Each can be compelled to do the things he has promised to do, and each is liable in damages if he fails to do the things he has promised to do. An option differs from a contract of sale because it is simply a unilateral contract by which a landowner, called the optionor, gives another person, called the optionee, the right to buy the land at a fixed price within a specified time. The owner does not sell his land or any interest in it by such an instrument. The optionee does not get lands or an interest in them, or, for that matter any agreement that he shall have the lands concerned. He gets only the right to call for and receive lands if he so chooses. If, within the time specified in the option, the optionee exercises the privilege granted, the option then ripens into a contract of sale. If the optionee lets the specified time go by without taking any action, he has no further rights to the land, nor can he recover from the landowner the consideration paid for the option.

ESCROWS

In simple terms, an escrow arrangement allows time to pass between the execution of a contract of sale and the delivery of a deed to the buyer, without undue risk to either the buyer or the seller. The seller hands to the escrow agent (a disinterested third person or corporation) a deed conveying the property to the buyer together with a copy of the sales agreement stating the terms of the sale and generally including the instructions to the escrow agent. Other items such as the abstract, title insurance policy, title insurance commitment, mortgage satisfaction, lease agreements, assignments, tax receipts, bill of sale to personal property items, plats or maps, insurance policies, etc., may also be deposited in escrow. The charge for escrow services is generally borne by the buyer unless the parties agree otherwise. For protection of the buyer, the contract of sale (duly acknowledged) may be recorded giving constructive notice to the world of buyer's interest. Such recording will prevent obligations of the seller from becoming encumbrances against the buyer's interest in the real property. At a later time, when the buyer has paid the purchase price to the escrow holder, the escrow holder delivers the deed and the other

documents to the buyer and delivers the purchase money to the seller.

Example: The seller delivered a deed to his escrow holder and then died. The buyer thereafter performed his obligations under the escrow agreement. The deed is considered as passing title to the buyer as of the date of the delivery of the deed to the escrow holder. Equitable title relates back to such time.

Escrows are valid if the following requirements are met:

1. There must be a valid and enforceable conditional contract for the sale of the land. If the sales agreement does not contain all the essential escrow instructions, a separate escrow agreement must be executed and delivered to the escrow agent.

2. The deed must be properly executed and completed.

3. The escrow holder must be some third person not interested in the sale. Neither buyer nor seller may act as escrow holder nor may either withdraw any instruments from the escrow without consent of the other, except that the seller may withdraw the escrow papers upon forfeiture after notice as stated above.

Section VI

Agency and Brokerage

In practically every transaction dealing with land that a real estate salesman or broker becomes involved in, he is acting as an agent for some person. Because of the fiduciary character of the agency relationship, it is essential for the practitioner's protection that he be aware of the practical and legal implications of this relationship.

The agency relationship can be defined as the *legal relation resulting from an agreement that one person, called the agent, shall act for and be subject to the control of another person, called the principal.*

The term, *brokerage,* signifies an activity which involves the selling of a commodity through an intermediary who predominantly acts as agent for the seller, receiving a previously agreed upon compensation based upon a percentage of the gross selling price. Real estate brokerage varies little from this definition except for the greater need of specific written authorization or agency employment agreements from the seller. In the trade, these are called listing contracts. However, it can be reemphasized here that the fiduciary and trust relationship implicit in the agency relationship permeates real estate brokerage practice.

Despite the fact that a number of real estate sales, particularly those involving homes, are made directly between buyer and seller, the broker performs a much needed function in our economic and social system. The mere fact that he exists is sufficient proof of this statement. Brokerage operation may be divided into the phases of: (a) securing listings (developing an inventory) through leads and direct canvassing; (b) prospecting for or finding buyers by means of various forms of advertising; (c) negotiating or bringing together a meeting of the minds of buyer and seller; and finally, (d) closing, which involves the legal transfer of the property with the required instruments and, invariably, arrangements for the financing and disbursement of funds.

This agency relationship normally arises as the result of a contract. In the real estate business this contract is usually the listing agreement, in which the property owner appoints or authorizes the broker as his agent to sell real property. In this situation the property owner is the *principal;* that is, the one who directs or authorizes his *agent,* the broker here, to act. In other situations, the broker, of course, can be authorized to buy, or lease, or any other act the principal directs.

Alhough it is not required that an agency contract be in writing, it is strongly recommended that it be so it will be readily available to answer any questions that may arise later concerning the agency relationship, it is also possible for the agency relationship to arise by implication, i.e., an agent by estoppel (See Section 2-106, Revised Codes of Montana). The law of Montana (See Section 2-116, Revised Codes of Montana) requires that a contract authorizing or employing an agent or broker *to purchase or sell* real estate for compensation or commission must be in writing to be valid and enforceable.

TYPES OF AGENTS

An agent can be classified as either *general* or *special* depending on the extent of authority that his principal has given him.

A general agent is one whom the principal has given a wide scope of authority to conduct a series of transactions of a continuous nature. An example would be one appointed manager of a hotel with the authority to hire and fire employees, contract for services, and buy needed supplies.

A special agent is one whom the principal has granted only limited authority to handle a single transaction. The prime example of this would be a broker employed to sell a house—he has limited authority to sell this particular house, and no authority to do anything else.

AUTHORITY OF THE AGENT

An agent has the power to bind his principal when he has been given the requisite authority by his principal to act for him in a given situation. This authority is usually *actual* authority, either expressed or implied, but it can be apparent authority.

Actual authority is clearly that authority given expressly by the principal to his agent to do or complete a given task. The agent also has the implied authority to do that which he reasonably needs to perform his designated task. An example being, a real estate broker given the expressed authority to sell a house, has the implied authority to allow a salesman to handle the transaction. The salesman in this situation being a sub-agent. The implied authority to delegate the authority conferred by the principal to the sub-agent to sell the house arises from the custom and trade of the real estate business and may not exist in another business.

Apparent authority is the authority which the principal, by his words or deeds, has led or allowed others to believe his agent, or one believed to be his agent, has. Whether this agent does or does not have such authority, third persons who have been led to believe the agent does have this authority by the

principal's words or deeds, and who act in reliance on this fostered belief, may hold the principal liable for the acts of his agent. An agent by estoppel binds his principal also by apparent authority.

DUTIES AND LIABILITIES ARISING OUT OF AGENCY

Because of the agency relationship, each of the parties owes certain basic duties to the other. A breach of one of these duties may open the wrongdoer to a lawsuit for damages.

A. Duties Principal Owes Toward Agent. The principal owes four basic duties to his agent, these are:

(1) to perform the agency contract,

(2) to compensate the agent,

(3) to reimburse the agent for expenses, and

(4) to indemnify the agent for loss suffered because of the agency.

The principal has the duty to abide by the terms of the agency contract. If the principal wrongfully breaks the contract, the agency is terminated but the principal will be liable in damages to the agent. If the agent is not performing according to the agreement or is guilty of wrongdoing, then the principal may justifiably terminate the agency with no liability on his part.

When the agent has performed his part of the agreement, the principal has the duty to pay him the amount of money agreed upon. If no amount of compensation is agreed to or stated, the principal must pay the agent the current market rate for such services in that locality.

If the agent incurs expenses in performing authorized acts for the principal, the principal has the duty to reimburse him for all reasonable expenses so incurred. In the ordinary real estate agency situation, the principal has no such duty to reimburse the broker. By the terms of the usual listing agreement and also by custom, the broker's sole compensation is a percentage of the selling price and it is understood that the real estate broker will pay his expenses out of his commission.

B. Duties Agent Owes Toward Principal. The agent also owes four basic duties to his principal, these are:

(1) to perform the agency agreement,

(2) to be loyal to his principal,

(3) to use reasonable care in performing the agency, and

(4) to account for all money and property received.

The agent has the duty to perform according to the terms of his employment contract. If the agent wrongfully breaks the contract, the agency relationship is terminated but the agent can be held liable to the principal for such breach. If the principal is not performing his part or is guilty of wrongdoing, the agent may justifiably terminate the agency without liability. The agent has the duty to obey all reasonable instructions of his principal in the performance of the agency relationship and can be held responsible for any loss caused by disobedience.

The agent owes a duty of loyalty and trust to his principal. He may not personally profit from the agency relationship, excepting his agreed upon compensation. He has the duty not to disclose, both during and after the agency relationship, confidential information obtained as a result of the agency if such disclosure would be to his principal's disadvantage or prejudice. An agent may not have interests adverse or opposed to those of his principal; nor may he represent another who has adverse or opposed interests, unless he has his principal's consent. Thus a real estate broker or salesman should not purchase property for himself from his client without the client's consent. The broker should not withhold any offers to purchase because he fears that the new offer, which may be only slightly higher, might upset a current deal. The agent must use his best efforts to obtain the most advantageous deal he can for his principal.

The agent has the duty to keep his principal fully informed of material facts that may affect the subject matter of the agency. If the agent fails to inform his principal, he can be held liable for loss resulting to the principal. Thus a real estate broker should inform his seller of a zoning change or proposed change that might enhance the value of the property so that the seller may profit from the increased value.

The agent has the duty to use reasonable care in performance of the agency. He can be held liable to the principal for any loss caused by his lack of care. An agent holding himself out to the public as possessing certain abilities and skills has the duty to use the care and skill usually possessed by a competent real estate broker or salesman in that locality. He cannot escape responsibility for his negligence or lack of ability by pleading ignorance.

The agent has the duty to make an accounting to his principal for all money or other valuable considerations which he receives in the course of the agency. He should keep accurate records and accounts of all transactions. He must keep the funds and property of his principal separate from his own. Thus a real estate broker should deposit in a separate trust account funds received from the buyer as part payment on the purchase of real estate.

An agent cannot act for two principals in negotiations with each other unless both have knowledge of, and consent to, the

dual agency. Such conduct is opposed to public policy in that it places the agent in a position where he may represent conflicting interests. Therefore, regardless of his honesty or fairness of the contract in the particular case, the agent cannot recover commissions from either.

The above discussion of the duties and responsibilities of the principal to the agent and of the agent to the principal applies to the real estate salesman as well as to the broker. The broker is the agent of the property owner (although occasionally he is the agent for the buyer); the salesman is the agent of the broker.

C. Duties and Liabilities Between Agent and Third Party.

If the agent has authority to enter into a contract with a third party on behalf of the principal, the agent has no personal responsibility to perform such contract. Only the principal and the third person are parties to that contract. If the principal fails or refuses to perform, the agent cannot be held liable for the principal's non-performance. But if the agent enters into a contract for his principal without, in some way, revealing that he is an agent, he can be held personally liable for the performance of the contract by the third party. In this latter situation, the agent may also hold the third party responsible for performance.

Normally, a real estate broker has no authority to sign a contract for the sale of real estate. His authority is usually interpreted as being only to find a ready, willing and able purchaser to buy on the terms set forth by the seller. If the owner fails or refuses to perform the contract of sale, the broker is not liable to the buyer.

If a person claims to be an agent for another, he impliedly warrants or guarantees that he has such authority. He can be held liable to the third party for any loss caused, for breach of such warranty, if he has no real authority to act as agent.

An agent is also personally responsible to the third party for any tort (civil wrong such as fraud) which he might commit, whether with or without his principal's permission. If a real estate broker or salesman knowingly misrepresents a material fact concerning the property for the purpose of inducing the prospect to purchase and the prospect purchases, relying on the misrepresentation, the agent is responsible for the tort of fraud or deceit. If the agent acted with the principal's consent, or within the scope of his authority, the third party has the choice of recovering his loss from the agent or the principal. In turn, a third party is liable to the agent for any tort he may commit against the agent.

An agent may also become personally liable, as a principal to a third person if, with his consent, credit is given to him personally in a transaction.

D. Duties and Liabilities Between Principal and Third Party.

The principal owes the duty to the third person of performing contracts made by his authorized agent. If he does not perform, the third party may hold him liable for breach of contract. Likewise, the third party is responsible to the principal for performing contracts made with the agent. In the usual real estate situation, the buyer and seller personally sign the contract and the question of liability on a contract made by a duly authorized agent does not arise.

The principal is personally liable for the torts of his agents, if he authorized the agent to do the wrongful act or if the act was within the scope of the agent's employment. Thus a seller of real estate is liable to the buyer for the false representation as to a material fact about the property made by the broker or salesman which induced the purchaser to buy, if such representation was with the seller's knowledge or investigation of the property before offering it for sale. If he does so, he can avoid the bad publicity of a possible lawsuit or the bad public relations of having a buyer suspect him of fraud. If the broker relies only on what the seller tells him this might well occur.

TERMINATION OF THE AGENCY RELATIONSHIP

The agency relationship existing between the principal and agent may be terminated either voluntarily or involuntarily. Normally the relationship will end naturally when the reason for the relationship has ended; i.e., the house has been sold. In some circumstances, the reason for the relationship has not been removed, and both parties still would like for the relationship to exist, but due to the destruction of the subject matter the relationship is terminated by operation of law. Further examples of voluntary and involuntary terminations would include:

1. *Voluntary Termination.* (Sometimes referred to as Acts of the Parties). The parties to the agency agreement, by either their rightful or wrongful action, may voluntarily terminate the agency.

a. *Mutual Consent.* The principal and the agent may by mutual agreement put an end to the agency relationship at any time.

b. *Terms of the agency contract.* The agency agreement itself usually sets the time of termination. If the agreement calls for the accomplishment of a particular object, the agency ends when that object has been accomplished. For example, the agency authorizing a real estate broker to sell a piece of property will end when the property is sold. If the agency is for a definite period of time, as ninety days or a year, the relationship terminates when the specified time has elapsed. If no time

is specified, it is generally implied that the agency is for a reasonable period of time under the circumstances.

c. *Renunciation by the agent.* The agent may at any time renounce or cancel the agency agreement. But in so doing, unless he has justified grounds, the agent can be held liable to the principal for breach of contract.

d. *Revocation by the principal.* The principal generally may at any time also revoke or cancel the agency agreement. Again, in so doing, unless he has justified grounds, the principal can be held liable to the agent for breach of contract.

2. *Involuntary Termination.* (Sometimes referred to as by Operation of Law). It is a principle of law that the agency will be automatically terminated by the law upon the happening of an event which makes the agency relationship impossible or impractical.

a. *Death.* The death of the principal or the agent generally will automatically cancel the agency relationship. Knowledge of the death of one party to the agency by the other party is not required.

b. *Incapacity.* The incapacity of either party to the agency generally will automatically terminate the relationship. Again, notice to the principal or the agent of the other's incapacity is not required.

c. *Bankruptcy.* By the general rule, the bankruptcy of either party will terminate the agency, except in the case where the bankruptcy has no effect upon the agency or its purpose. In a real estate broker's agency, bankruptcy of the owner terminates the agency because the title to the property passes to the trustee in bankruptcy.

d. *Changes of Law.* A change of law causing the purpose of the agency to become illegal will cancel the relationship. An agency to sell liquor in an area which passes a dry law will automatically be terminated.

e. *Destruction of the subject matter.* The destruction or loss of the subject matter of the agency will automatically end the agency. The destruction of a house by fire terminates the real estate broker's agency to sell the property.

Montana Law—See Sections 2-101 through 2-407. Revised Codes of Montana, set forth in Section XXIII of this manual, for statutes relating to an agency.

Section VII

Listings

General. A real estate broker ordinarily is a special agent authorized to conduct a single transaction for his principal. The broker's principal is generally the owner of the real estate; sometimes his principal is a buyer commonly one seeking a special type of property. As a general rule, the broker's authority as a special agent is to find a purchaser who is ready, willing and able to buy the property either on the terms set out by the seller or on terms acceptable to the seller. The broker on occasion may be a general agent, such as when he is employed to manage and lease property, to collect the rent, to hire custodial help, to contract for repairs, etc.

The authority to act as agent is given to the real estate broker by means of a *listing contract*—which is simply the agreement of employment between the property owner and broker whereby the owner lists his property for sale with the broker. Such listings must be in writing because of the requirements of the Statutes of Frauds (See Section 13-606, Revised Codes of Montana) to be valid and enforceable, and brokers that accept listings on an oral basis should understand that they have no more than a "gentlemen's agreement."

Unless the broker has a written listing contract to support his claim of employment he cannot collect compensation even though he may have procured the sale. The law will not assist volunteers in their claim of employment. Occasionally claims arise out of the situation wherein two persons consummate a deal for which the broker tries to collect commission, but without a written memorandum of some kind, the broker has no legal position in court. The prudent and well-informed broker should make sure of his agency appointment.

TYPES OF LISTINGS

There are five types of listing contracts: (1) net listing, (2) open listing, (3) exclusive agency, (4) exclusive right to sell, and (5) multiple listing.

1. *Net Listing.* A net listing is a contract to find a buyer or leasee for the property at a certain net price to the owner. For example: the owner may give a net listing of $12,000 on his property to the broker. If the broker finds a buyer at $12,000 he receives no commission; if he finds a buyer at $15,000 he earns $3,000 commission. In the latter case, the courts will

strictly interpret the listing contract and if the terms are not clear and definite there may be a holding that the broker is entitled only to a fair commission and may not keep the full amount above the net listing price when it exceeds the usual commission.

Net listings are generally being discontinued in the sale of developed property. They are primarily used where the property is of a speculative nature. If the property sells for the net listed price or less, the broker receives nothing; if it sells for much more, the courts may not let him keep it all. In addition to there being no set price, an open net listing does not oblige the owner to restrict his listing to one broker, which in this case may lead to serious consequences. Thus on an open net listing given to three different brokers, these brokers may offer the property for sale to the same prospect at three different prices. When several brokers quote different prices for the same property, there is a reflection on the honesty and integrity of the real estate business.

2. *Open Listing.* Under an open listing, the owner lists his property with a broker at a specified price, agreeing to pay a commission on that price or any other price that may be accepted by the owner. However, the owner retains the right to list his property with other brokers. This type of listing is not uncommon in small communities, where the property owner will likely be personally acquainted with all or most of the brokers. He does not wish to antagonize the others by giving the listing to only one broker.

In an open listing the owner pays a commission only to the broker who sells the property. If the owner sells it to a buyer which he himself procures, he is not obligated to pay compensation to any broker holding the open listing.

3. *Exclusive Agency Listing.* Under an exclusive agency listing, the owner agrees that the commission for the sale will be payable only to the broker named in the listing agreement and agrees also that the property will not be listed with other brokers. However, if the property is sold by the owner to a buyer which he himself finds, then the broker is not entitled to a commission. An exclusive agency listing, as compared to the net and open listing, permits the broker to apply his best efforts unhampered by possible interference from other brokers.

4. *Exclusive Right to Sell Listing. (Commonly called exclusive listing).* An exclusive right to sell listing is like an exclusive agency listing in all respects, *except* the broker is given the *sole and exclusive* right to sell the property during the listing period. Even if the owner himself should sell the property to a buyer procured by the owner, the broker is entitled to a commission. This type of listing is the one most commonly used

by brokers in Montana. The broker can apply his best efforts, secure in the knowledge that his right to a commission, and recovery of his expenses for advertising and soliciting, cannot be defeated by anyone during the listing period. This type of listing should be carefully drafted and clearly explained to the property owner.

In general, it is common for all listings to provide that, if the property is sold—within a stated period of time after the expiration of the listing—to any party with whom the listing broker negotiated and whose name was revealed to the owner by the broker, then the owner must pay the broker his commission.

5. *Multiple Listing.* Technically, a multiple listing is not a separate kind of listing. Generally, it is an exclusive right to sell listing, with the additional feature that other participating brokers may also sell the property as sub-agents of the listing broker. Brokers usually members of a local real estate board, combine their interests through the facilities of a central listing bureau. Any broker who is a member of the multiple listing exchange may sell any property registered with the exchange. When the property is sold, the listing broker and the selling broker divide the commission according to the multiple listing exchange agreement.

Cooperative Sales Arrangements. The listing broker may enlist the aid of other brokers to aid him in the sale of the property although no written multiple listing agreement is in existence. The brokers then agree upon a commission division. These sales arrangements may be made between many brokers who are willing to act as a group and who exchange information concerning their listed property. There is no obligation for the listing broker to accept another broker as a sub-agent (as will be true in a multiple listing agreement), although once a listing broker has accepted the aid of another broker, agreement or custom will determine how the commission is to be divided.

BROKER RESPONSIBILITY

The real estate broker is an agent and as such owes his principal the duties of faithfully performing the agency agreement, to be loyal to his principal, to use the reasonable care of a competent broker and to account for all funds received. The real estate salesman, being the agent of the broker, owes corresponding duties to the broker.

The real estate broker has the duty to perform according to the terms of the listing contract. He must use reasonable efforts to accomplish the sale (or purchase) of the property. If the broker does not exert reasonable efforts to sell the property, the owner is justified in cancelling the listing agreement. It is

a violation of his duties as agent if the broker "sits" on a listing, that is, takes a listing and makes no attempt to sell the property. This sometimes happens when the broker knows that the owner is asking an unreasonable price. The broker used the technique of delay to induce the owner to reduce his price. At the time of taking the listing, the broker should diplomatically call to the attention of the owner comparable properties and their prices. The broker also has the duty to follow all reasonable instructions of the owner given in addition to the listing terms.

The real estate broker owes a duty of loyalty and trust to his client. The broker should never allow himself to be placed in a position where his individual interests conflict with those of his seller. Thus the broker should not purchase property for which he holds the listing, unless he makes a full disclosure to the owner. Neither should he represent both parties in a real estate transaction. The seller wants his agent to bring about a sale at the highest possible price; the buyer wants his agent to bring about a sale at the lowest possible price. These interests are irreconcilable. In attempting to serve two masters, the agent is in danger of sacrificing the interest of one to that of the other, or that of both to his own interest. However, the broker may act for both parties with their knowledge. By general custom the broker is permitted to represent both parties with their knowledge, and receive compensation from each in an exchange of properties.

The broker violates his duty of loyalty to his client if he informs the prospective buyer that he knows the seller will accept an offer of less than the asking price. He also should not withhold any offers for fear that the new offer, which may be only slightly higher than one being considered by the owner, might upset the current deal. The broker must use his best efforts with honesty and integrity, to obtain the most advantageous deal he can for the owner.

The broker represents himself to the public as an agent who possesses knowledge, ability and skill in the field of real estate. He owes to his clients the duty of exercising reasonable judgement and care in advising and rendering his services. If a client suffers any loss due to the broker's lack of care, knowledge or skill which a competent real estate broker should possess, he can hold the broker liable for such loss. Therefore, real estate brokers should keep abreast of social, economic and legal developments affecting real property. The Montana Real Estate Commission offers frequent opportunities for participation in continuous educational and conference programs.

The real estate broker has the duty to account to his principal for all funds received in the course of the agency. He should keep accurate records and accounts and should keep the funds of his principal separate from his own. He should deposit in a separate trust account funds received on behalf of his seller.

It is impossible to anticipate all the varied situations that a

broker may find himself in that will raise questions concerning his responsibilities. As stated in the National Association of Real Estate Boards' Code of Ethics: "No safer guide for conduct exists than that counsel, handed down through the centuries, and embodied in the Golden Rule, 'Whatsoever ye would that men should do unto you, even so do ye also unto them.' "

BROKER COMPENSATION

In order to be entitled to compensation, the real estate broker must: (1) establish his employment by the principal, (2) procure a buyer who is ready, willing and able to purchase the property on the terms set forth by the owner or on other terms acceptable to the owner, and (3) the sale must be consummated, or defeated by the refusal or neglect of the owner to consummate the sale as agreed upon. In the occasional case where the broker represents the buyer, the terms of (2) and (3) are obviously changed to fit that situation.

The broker's compensation is customarily a *commission* paid by the seller, which is determined as a certain percentage of the selling price of the property. The rate of commission is established by agreement of the parties or by the custom of the locality, not by law. This rate is usually five or six percent of the selling price. It is better practice and will prevent controversy if the rate of commission is stipulated in the listing agreement. If no rate is stipulated, then the broker's compensation is determined by the rate established by custom in that locality.

The broker is entitled to a commission if the sale is not consummated due to a defect in the title which the owner refuses or neglects to correct, *provided* the broker has obtained an enforceable contract which binds the purchaser to complete the sale when any such defect is corrected.

If the buyer wrongfully refuses to complete the sale, the broker generally receives his commission out of the downpayment made and forfeited by the purchaser. The broker's right in this instance is usually set forth in the contract to purchase and not in the listing agreement. (See receipt and agreement to sell and purchase in Section XX).

If the purchaser makes his offer to buy conditional on some event, such as his ability to secure a loan, then the buyer may rightfully cancel the contract of purchase if the condition does not occur. In such event the broker is not entitled to a commission.

If the broker finds a buyer for the property who offers a lower price or different terms than that agreed to by the owner in the listing and the owner accepts these changed terms, the broker is entitled to a commission based upon the lower price. It is said that the principal has impliedly agreed to, or has rati-

fied, variations in the terms of the original agency contract between himself and the broker.

The contract for the sale of real estate often states the amount of the commission and indicates the party (usually the seller) who is to pay said commission. The contract is valid without such provision, but it serves the purpose of removing all doubt as to whose responsibility it is to pay the commission and the amount.

Section VIII

Deeds

GENERAL

In ancient times before the development of our rather complex concept of land ownership (discussed in Section III), title to real estate was evidenced primarily by possession and the power to defend the claim against others. The earliest method of transferring title to real property was simply by the surrender of possession by the claimant to another.

The history of land tenure that culminates in the present day use of deeds for the conveyance of real property is deeply embedded in ancient law and is quite interesting. The transfer of personal property and chattels has always been effected by the passing or the giving of possession of the thing itself. In feudal times, when land was to be transferred the seller and the buyer went upon the land and a clod of dirt from the land was given to the new owner in the presence of witnesses, to symbolize delivery of the land. Today, the delivery of the deed represents the delivery and transfer of the land. A mortgage or trust deed usually begins with the words "This indenture" which is a survival of an old custom whereby deeds were made for each of the parties upon the same sheet of sheepskin and by cutting or tearing them apart with an uneven line, they were able at a later time to identify them because of the matching of their indentures.

According to our system of land ownership, title to real property can be transferred from one person to another by four general methods: (1) by descent, (2) by will, (3) by involuntary alienation, and (4) by voluntary alienation.

Title to property is transferred by descent when a person dies without leaving a will. This person is said to have died *intestate*. All states have statutes of *descent and distribution* for the purpose of disposing of the property of the intestate. The general plan of such statutes is to distribute the property to the nearest relative, this presumably being the desire of the deceased. According to Montana Law, the property of the intestate descends one-half to the spouse and one-half to a single child; if there is more than one child, then one-third to the spouse and the other two-thirds equally to the children. If there are no children, the spouse inherits all; if there is no spouse, the children take all in equal shares. If there are neither spouse nor children, then provision is made for the nearest surviving relatives to inherit in the following order: the par-

ents, then the brothers and sisters, then the next of kin in equal degree.

Title to property may be transferred by a will. The laws of each state given a person the right, subject to certain limitations, to dispose of his property after his death. When a person dies leaving a last will and testament, he is said to have died *testate*. In no state can the husband dispose of all his property and leave the wife nothing. According to Montana law, the surviving wife may renounce the will and take as though her husband died intestate, or a husband is entitled to one-third of the deceased wife's estate, not withstanding a will to the contrary. The deceased may dispose of the remainder as he chooses.

Transfer of title by involuntary alienation is a transfer without the owner's volition or consent. Examples of such involuntary transfers are tax sales and sales to foreclose mortgages or to enforce mechanics' or other liens. Another example is loss of title by adverse possession. The owner may lose title by adverse possession if he is not making use of the property and an adverse claimant holds possession of the real estate openly and notoriously, hostile to and to the exclusion of the owner for a period of time as required by law, five years in this state.

Transfer of title by voluntary alienation is the normal real estate transaction, whereby either all or some of the owner's rights are voluntarily transferred to another. Voluntary alienation may occur by gift or sale. Examples of such transfers are: a sale of real estate under a contract consummated by delivery of a deed, transfer of title by a deed or trust, or mortgage as security for the payment of a note, and a lease.

One of the important rights of real estate ownership is this right of alienation—the right to transfer ownership of the real property to another. In general, the conveyance of real estate by a person while living is accomplished by the execution and delivery of a *deed*. A deed is a legal instrument in writing, duly executed and delivered, whereby the owner of the land (the grantor) conveys to another (the grantee) some right, title or interest in or to the real estate.

TYPES OF DEEDS

There are four major classifications of deeds: (1) general warranty deed, (2) special warranty deed, (3) bargain and sale deed, and (4) quitclaim deed. The difference between the types of deeds lies solely in the degree of protection or guarantee that the grantor promises or warrants to that grantee. One type of deed does not transfer any greater interest or title than another. For example, if X owns a fee simple interest in land and conveys his interest to Y by either a general warranty deed or a quitclaim deed, X has effectively transferred his fee simple

title to Y. By using a quitclaim deed X does not guarantee to stand behind the title and make good any loss that Y may suffer because of a flaw in X's title; by using a general warranty deed X agrees to stand behind the title and to defend against any persons claiming the same.

1. *General Warranty Deed.* A general warranty deed is one in which the grantor warrants or guarantees the title against defects existing before the grantor acquired title or arising during the grantor's ownership. It does not warrant against encumbrances or defects arising from the grantee's own acts. The usual covenants or warranties contained in a general warranty deed are commonly classified as follows: (a) covenant of seizin, (b) covenant against encumbrances, (c) covenant of quiet enjoyment, (d) covenant of further assurance, and (e) covenant of warranty forever. The first two covenants relate to the past; the others relate to the future.

a. *Covenant of seizin.* By this covenant the grantor guarantees that he owns the property and has the right to convey it. The fact that the property is mortgaged or is subject to some restriction is not a breach of the covenant.

b. *Covenant against encumbrances.* This covenant guarantees that there exist no encumbrances or claims against the property, except those which are specifically mentioned and excluded from this warranty.

c. *Covenant of quiet enjoyment.* The grantor of this covenant guarantees that the grantee shall not be evicted nor disturbed in his possession of the property. Threats or claims by outsiders do not constitute a breach; the purchaser must be actually dispossessed before recovery can be had against the grantor.

d. *Covenant of further assurance.* By this covenant, the grantor promises to procure and deliver any other instruments which are subsequently necessary to make the title good.

e. *Covenant of general warranty.* This covenant guarantees that the grantee shall have title and possession to the property. Many text writers treat this covenant as being part of the covenant of quiet enjoyment. (See Section 74-109, Revised Codes of Montana).

At common law and generally today, the first two covenants do not "run with the land"—that is, only the grantee may sue the grantor for their breach. The last three covenants are said to run with the land—that is, the grantee or any subsequent purchaser of the land may sue the grantor for their breach.

2. *Special Warranty Deed.* A special warranty deed is one

in which the grantor warrants or guarantees only against claims asserted by, through or under him. In other words, the grantor warrants the title against defects arising after he acquired the property and not against defects arising before that time.

3. *Bargain and Sale Deed.* Technically, any deed that recites a consideration and purports to convey the real estate is a bargain and sale deed. Thus, many quitclaim and warranty deeds are deeds of bargain and sale. Not uncommon is a bargain and sale deed with a covenant against the grantor's acts. In such a case, the grantor warrants only that he has himself done nothing to harm the title, in Montana this is implied by use of the word "grant." This covenant does not run with the land. Examples of bargain and sale deeds with a covenant against the grantor's acts are an executor's deed, an administrator's deed, and a guardian's deed.

4. *Quitclaim Deed.* A quitclaim deed is one in which the grantor warrants nothing. It conveys only the grantor's present interest in the land, if any. A quitclaim deed is frequently used to clear up a technical defect in the chain of title or to release lien claims against the property. Example of such deeds are correction deeds and deeds of release.

USUAL ELEMENTS OF DEEDS

In general, the usual elements of deeds are:

1. Written instrument
2. Date
3. Parties—grantor and grantee
4. Recital of consideration
5. Words of conveyance
6. Description of the property
7. Exceptions and restrictions
8. Warranties and covenants
9. Signature
10. Delivery and acceptance
11. Acknowledgment
12. Recording.

A deed to be valid need not contain all of the above-listed elements. Only six elements are essential for a valid deed:

(1) written instrument, (2) parties—grantor and grantee, (3) words of conveyance. (4) description, (5) signature of grantor, and (6) delivery and acceptance.

1. *Written Instrument.* To be effective, the deed must be in writing. (See Section 13-606, Revised Codes of Montana). A deed should not be altered in any manner after its delivery to the grantee, otherwise it may be set aside by the courts. In the case of printed forms, all blanks should be properly filled in according to the requirements of the law and according to the intention of the parties.

2. *Date.* A date is not essential for a valid deed, although it is the universal custom and by far the best practice to date all deeds. Inclusion of the date offers prima facie evidence of the day the grantor signed and might prevent future question or controversy concerning the time of delivery of the deed.

3. *Parties—Grantor and Grantee.* To be valid a deed must have a grantor who is conveying an interest in the property. The grantor must be named or otherwise clearly designated. The name of the grantor should be identical to that appearing in the conveyance by which he received his title. (See Section 67-1606, Revised Codes of Montana). Certain minor discrepancies in name will not invalidate the deed, but to avoid possible litigation it is advisable that care be exercised to avoid any such discrepancies. The grantor, if a natural person, should be of legal age and sound mind, otherwise the grantor, or other parties in interest, may, at a later date, have the deed set aside and recover the property. A deed is not effective unless it also designates someone to whom title passes. Every deed must have a grantee, otherwise it is void. The grantee must be named or indicated with reasonable certainty.

4. *Recital Consideration.* A deed is valid although there is no consideration or recital of consideration. A person may make a gift of a parcel of real estate and the lack of consideration does not render the conveyance void But, in general, a donee (receiver of the gift) cannot enforce covenants of warranty against the donor (giver or grantor) since said covenants are not supported by consideration. Also, a gift deed may be set aside on the grounds of fraud. For example, a gift deed given to defraud creditors may be set aside by the grantor's creditors. Accepted standards of conveyancing dictate that a deed contain a recital of consideration. If the deed recites consideration, the burden of providing lack of consideration is on the one who attacks the deed.

5 *Words of Conveyance.* Without words of conveyance, a deed is ineffective. An instrument cannot be construed to be a

deed unless it contains words which manifest an intent to transfer title to an interest in real estate. No specific words are required, but the ones commonly used are "sell and convey," "grant, bargain, sell and convey," "convey and warrant." (See Sections 67-1602 and 67-1616, Revised Codes of Montana).

6. *Description of Property.* A deed is not valid unless it describes the real estate conveyed. Any description that unquestionably identifies the property is sufficient for the deed, but it is advisable to use the same legal, technical description used in the previous deeds, thereby avoiding discrepancies in the records. The courts have been liberal in holding rather ambiguous descriptions as good, but a court action is a high price to pay to correct technical errors when such could have been avoided by care in the drafting of the description. It is usual, following the description, to add words indicating that all the appurtenances go with the land. All improvements to the land go with it as appurtenances; thus, in transferring a house and a lot it is necessary only to describe the lot upon which the house is situated.

7. *Exceptions and Restrictions.* In a warranty deed, the grantor is assumed to be conveying the property free and clear of all encumbrances and restrictions except those specifically mentioned in the deed. Therefore, the deed usually contains a provision that the grantor conveys the property free and clear of all encumbrances except—then follows a specific enumeration of the exceptions, such as: "subject to that certain mortgage (giving complete description);" "subject to an easement (with a detailed description);" "subject to special improvement district taxes (added details)."

The grantor may place restrictions upon the right to use the real estate conveyed. Such restrictions must be reasonable and not contrary to public policy. The use of restrictions—usually called "deed restrictions" or restrictive covenants"—is an old practice. The foundation of this practice arises out of the rights of property. The owner has the right of free alienation; that is, he may dispose of his estate in any manner he may elect. Once the deed restrictions are established they run with the land and are limitation upon the use by all future grantees. Deed restrictions are most frequently encountered in the development of subdivisions wherein the limitation is for the benefit of all the landowners. Typical restrictions deal with the minimum size of the house, type of material that may be used, exclusion of commercial establishments. Well formulated deed restrictions have a stabilizing effect upon property values. A homeowner is protected against forbidden uses; he can rely in safety knowing that a grocery store will not be his neighbor and that his neighbor's house must conform to certain minimum standards. Violations of deed restrictions can be enjoined through a court

action brought by any party for whose benefit the restrictions were imposed.

8. *Warranties and Covenants.* Warranties are not an essential requirement of a valid deed. The grantor may convey his interest in the land by a quitclaim deed, wherein he gives no warranty of any kind, or he may convey by a general warranty deed, wherein he makes specific warranties to the grantee, such as to defend grantee's right, title and interest in the property, and peaceable possession thereof, as against all persons lawfully claiming or to claim the same. In Montana, and many other states, a statute has been enacted providing for the form of covenant of warranty. (See Section 74-110, Revised Codes of Montana).

9. *Signature.* The deed is invalid unless it is signed by the grantor. If there is more than one grantor, as where the property is owned by joint tenants, each must sign the deed. In a few states, primarily in the east, a seal is necessary for a deed to be valid. Montana and most states have abolished the requirement of a seal. Again, a few states but not Montana require that the signature of the grantor be witnessed.

10. *Delivery and Acceptance.* A deed is not effective unless it is delivered by the grantor and accepted by the grantee. The delivery of the deed is a question of the intent of the grantor. If the deed is given to the grantee to afford him an opportunity to examine it, this does not constitute delivery. To be an effective delivery, the grantor must intend to pass title to the grantee. According to Montana Statute, when a deed is duly executed the law presumes that there has been an effective delivery at its date. (See Section 57-1510, Revised Codes of Montana).

For delivery of a deed to be effective, it generally must be made during the lifetime of the grantor. If the grantor executes a deed, retains it and directs that upon his death it is to be delivered to the grantee, such deed does not pass title. Delivery of the deed may be made to some third person for the benefit of the grantee, but to be effective, the grantor must surrender all right to control or recover the deed.

11. *Acknowledgment.* An acknowledgment is a declaration made by a person (in the case of a deed, by the grantor) to a notary public, or other public official authorized to take acknowledgments, that the instrument was executed by him and that it is his free and voluntary act. The notary public, or other authorized officer, fills out the certificate of acknowledgment customarily printed on the instrument. Montana law provides that the acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence,

on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president, or vice-president, or secretary, or assistant secretary of such corporation, or other person, duly authorized by resolution of such corporation, who executed it on behalf of the corporation.

A deed is valid although not acknowledged, except that a married woman's signature must be acknowledged. (See Section 67-1603, Revised Codes of Montana). Only two states require that the deed must be acknowledged to be good. A great many states, including Montana, provide that a deed cannot be recorded unless acknowledged. Since an unrecorded title can lead to serious difficulties, it is advisable in such states to have the deed acknowledged so that it can be recorded immediately upon delivery.

12. *Recording.* A deed is valid although not recorded. However, recording has a two fold effect. It protects an innocent purchaser or encumbrancer who acts in ignorance of an unrecorded instrument *and* provides a conclusive presumption that all persons have knowledge of the recorded instrument. This presumption of knowledge of all recorded instruments is what is meant by the term "constructive notice" or "legal notice" of another's right. Therefore, to give constructive notice to all persons of his right, the grantee should immediately record his deed.

In addition to such constructive notice, a purchaser or encumbrancer may have "actual" knowledge of another's right or claim. For instance, a purchaser is presumed to have actual notice of all rights and claims of parties in possession of the property, so that even if the right or claim of the party in possession is unrecorded, the purchaser cannot defeat it.

Real estate may also be conveyed by deed to a person (individual, partnership, or corporation) as *trustee* and for the benefit of a third party. The trustee then holds legal title and the third party holds the equitable title and receives the benefits. This is called a *trusteeship.*

Section IX

Trades and Exchanges

The population explosion, vast industrial and commercial development, together with the tremendous demands brought on by our "cold-war" military preparedness, have brought to the office of the real estate broker an increasing variety of opportunities and duties. He has become not only the "locator" of homes, but a professional counselor. Problems of financing, leasing, development of a new residential and business area, rehabilitation of blighted areas, and any number of other matters affecting the use, occupation and transfer of the fundamental commodity—land—now challenge the broker's attention and preparedness.

The natural and inevitable consequence has been an increasing tendency toward specialization. Brokers have become expert in the field of commercial leases, in the location and development of shopping centers and in the construction and sale of single-family dwellings, and thereby have brought into being entire new communities.

Increasingly important among activities that merit specialization is the exchange of real properties. The complex and increasing demands of the internal revenue laws are daily creating broad opportunities in this field. Countless owners of real estate find themselves in a disadvantageous position if they sell their properties for cash. There are innumerable motives tending to promote a desire on the part of many owners to dispose of their properties, or to acquire new ones in their stead, but the tax cost is a strong, sometimes overwhelming deterrent.

A well-considered exchange often is the solution to an otherwise insurmountable problem. The mediator, or negotiator, representing the parties in the transaction is the real estate broker. He collects a commission from each party to the exchange. Though real estate exchanges are fundamentally simple, the actual procedures require definite techniques and applications in actual practice.

Real estate exchanging today is a recognized specialty of the real estate broker. Property owners no longer should have any doubts about obtaining a good, equitable exchange. Real estate exchanges on a larger, more legitimate basis are here to stay, and for the future a definite upswing is noted in trade-minded owners and trade-minded real estate brokers.

The trade broker has a slight advantage over the cash selling broker. His business is not affected as much by the ups and downs in the mortgage money market. He never has to look for

salable merchandise even in a depression, as property owners turn to the exchange route to dispose of their holdings and the trade-minded brokers make the deals.

Reliance on only the cash sale in today's market would seem to relegate the real estate salesman to the average or mediocre class. Exchanges offer a means of providing a superior service to clients and lifts the salesman from the monotony of ordinary cash selling to levels of higher service and salesmanship.

There is nothing mystic about exchanging nor is it difficult to learn the techniques as applied by the successful trade-minded brokers throughout the United States. It should be remembered that a cash sale is in essence an exchange—cash for a parcel of real estate. A salesman gets started in exchanging by thinking how he can satisfy the needs of two property owners by an exchange rather than the often slower method of two sales and two purchases.

Webster's New Collegiate Dictionary defines an exchange as, "the act of giving or taking one thing in return for another as an equivalent." An exchange of real property then is a transaction in which two or more owners exchange deeds to their respective properties. In most cases, however, the values are not equal and one owner is required to give to the other the difference ("boot") in cash, by note, or something else of value.

There are different types of exchanging patterns, but the most commonly used are the four generally referred to as the "simple or straight-across exchange," the "multiple exchange," the "trade-in" and, fourth, the "principal exchange." There are variations of these four patterns and each requires a different application. The new salesman should always secure the advice and help of his broker before preparing an exchange agreement.

A "simple or straight-across" exchange is the most common pattern and is a true exchange. It is often called a two-way exchange because it involves only two owners. Through the creative sales ability of a real estate broker, two property owners exchange their respective properties to the benefit of both. The broker earns and receives a commission from each for his services. In a true exchange the broker remains a broker receiving a commission, and does not enter in as a principal.

A "multiple exchange" involves three or more owners and three or more properties. Often the second party to a straight-across exchange will not accept the property being offered, but will accept some other type of property in exchange for what he has. The experienced exchange-broker will then suggest that the second party sign the exchange agreement conditional upon the exchange of the unwanted property for a property which the second party will accept. When the acceptable third property is found, a second straight-across exchange agreement is written. If this second exchange agreement is satisfactory to

the third party, three property owners exchange properties and the broker earns three commissions for his resourceful negotiations.

The "trade-in" pattern is not an exchange but is defined as a trade. Brokers and builders use this method to sell a house. It has been developed by some builders into a mass selling technique. The plan is a basically simple arrangement whereby the owner of an old house agrees to purchase a new or larger house through a broker—at a specified price and at a specified time. The broker, in return, promises to purchase the homeowner's old house at a specified price and time—unless the old house has already been sold. At the same time, the broker usually takes a listing on the old house and if it sells, the broker receives the usual commission. If it doesn't sell, the broker purchases it at the agreed net price and the owner completes the purchase of the new or larger house. In either event, the broker sells the larger house and earns a commission which is his primary goal.

The "principal" or pseudo exchange usually starts out as a straight-across exchange. However, it bogs down when one party rejects the exchange and demands cash for his property. At this point the broker may attempt to enter in as a principal and purchase the rejecting party's property at a net figure (at least less the commission). Then, with the consent of both parties the broker enters in as a principal in place of the owner who rejected the contract and completes the exchange, without a commission from either party. After the closing the broker owns one property at, what he hopes, is a favorable price. Later, he may attempt to sell to show a profit at least equal to the two commissions he would have earned on the straight-across exchange. Changing from a broker to a principal status is a phase of exchanging which should be handled with utmost care and with all the facts fully disclosed by the broker to the two owners.

One of the prerequisites of the salesman or broker in becoming a successful trader is that of more thoroughly counseling with clients to learn their motives, desires and needs. In most cases, the motive is the key to the exchange and enables the conscientious broker to complete a transaction which satisfies the needs of the two property owners involved.

Some of the motives which cause property owners to be receptive to exchanging are:

1. Owner can't sell at the price he paid and maintains ego by exchanging for a property equally inflated.
2. City home for suburban home.
3. Retired couple want income.
4. To increase income.

5. To reduce management problem.
6. Nonproductive property for income property.
7. Afraid to buy before selling.
8. To avoid selling before buying.
9. To establish a higher base for depreciation.
10. To continue income without a lapse.
11. To postpone payment of capital gains.
12. To avoid having cash on hand.
13. Because can't sell for cash.
14. Just doesn't want what he owns.
15. To have more spendable income.

The real estate broker's problems are more complex in an exchange than a sale because he is acting as the broker for two or more principals and must satisfy each in order to complete a satisfactory transaction. He must determine first that an exchange is logical and beneficial to both parties before he proceeds to work out the details, and put it into contract form. Knowing the values of both properties, it is his obligation to determine an equitable basis on which to transact the exchange.

The broker must inform both principals to an exchange that he is collecting a commission from each. Even though he has an exclusive listing on each property in an exchange, the broker should get a commission letter from each owner. If the principals to an exchange object to paying commissions, it should be explained that an exchange of two properties is the same as two separate sales and the broker is entitled to two full commissions.

The amount of the commission is usually determined by the exclusive listings or by agreement as to the fair market values of the properties involved. If two brokers are involved in a simple or two-way exchange, the two commissions are pooled and split equally. On multiple and other types of exchanges the commission split between brokers is usually more involved and is settled by separate agreement.

Too much emphasis cannot be placed on the broker's responsibility in an exchange. He is representing two or more principals and must deal with each one impartially and honestly. The broker's relations to the principals must be open and above board. There should not be any hidden or secret profits. The fiduciary responsibility of the broker in an exchange is even more demanding that that in a sale.

Brokers and salesmen who are interested in increasing their incomes through trades and exchanges should read the periodi-

cals and books written on this subject and should investigate the possibility of joining national trader groups such as the International Traders Club, as well as local trader clubs or groups which meet regularly to foster and encourage exchanging.

Section X

Evidence of Title

GENERAL

A prudent buyer of real estate will demand that the seller furnish proof of his (the seller's) ownership. The fact that the seller can produce a deed to the property naming him as grantee is not adequate proof. This deed may be defective or the previous owner's title may be defective. The seller may own a fee simple absolute title or he may have some lesser degree of ownership; his title may be technically free and clear or it may be legally unmerchantable; or his title may be heavily encumbered by liens and restrictions. The prudent buyer will want to know the exact state of the seller's title. In addition, the buyer's lender will be greatly concerned with the state of the title, since he will accept a mortgage on this property as security for the repayment of the loan he makes.

The problem of "evidence of title" is concerned with the proof of ownership of real estate. The major evidences of title are: (1) an abstract and opinion, and (2) title insurance.

ABSTRACT AND OPINION

All states provide for the recording, in a public office, of every document by which any estate or interest in land is created, transferred, encumbered, or otherwise affected. In Montana that public office is the office of the county clerk and recorder of the county in which the real property is situated. Although an unrecorded deed is valid between the parties, it is void as against a subsequent purchaser whose conveyance is recorded. (See Section 72-202, Revised Codes of Montana). Thus we see that the recording law has twofold effect. It protects an innocent and unknowing purchaser or encumbrancer who acts in ignorance of an unrecorded instrument *and* it provides a conclusive presumption that all persons have knowledge of the recordings.

From the preceding, it becomes apparent that these public records furnish a reliable history of the title or ownership of a tract of land. An abstract of title is a summary of the material parts of every recorded instrument affecting the title to a piece of real estate, compiled by a duly licensed abstracter.

To the average unskilled purchaser, the receipt of an abstract affords him no knowledge of the state of the title to the real estate. In addition, he needs the opinion of an attorney to in-

form him of the nature of the seller's title and of any defects, liens, encumbrances, or other rights which might be disclosed by the abstract.

Abstracter's and Attorney's Liability. The abstracter is in no way a guarantor of the title to the real estate. The law imposes upon him only the duty to exercise due care in the preparation of the abstract. If the abstracter negligently omits a document from the abstract or incorrectly summarized the content of such instrument, he can be held liable for any loss caused the purchaser. Likewise, an attorney can only be held liable for damages which are caused by his negligence in the examination of the abstract. As an example, the attorney is liable for any loss caused by his failure to discover an existing, recorded lien contained in the abstract, but not for his opinion as to the legal effect of such an instrument.

Some Risks Involved. It has been said that no evidence of title can completely and conclusively reveal the exact state of the title to real property. For instance, an abstract may indicate that the seller has clear title, but the chain of title may contain a forged deed. There is no way of knowing from the abstract whether a deed is forged or not and, of course, such a deed passes no title. Also an abstract will not reveal the rights of parties in possession. The abstract may show title in one person but another may possibly have superior right through adverse possession. Fortunately, such things rarely happen. With an abstract and opinion, together with an examination of the property itself, the buyer can be reasonably certain that he will obtain a good title.

TITLE INSURANCE

Title insurance is a contract which protects the insured against loss occurring through defects in title to real property. The risk of loss, as in other policies of insurance, is transferred from the property owner to a responsible insurer. A title company will not insure a bad title any more than a life insurance company will insure a dying person.

Basically, a title insurance policy provides that the company will indemnify the owner against any loss that he may sustain because of a defect in the title to the real estate, provided that the defect is not specifically excluded in the policy. Further, the company agrees to defend at its own expense any lawsuit attacking the title where such attack is based on claimed defect which is covered by the insurance provisions. Examples of typical standard exclusions which the title policy does not insure against are:

1. Rights or claims of parties in possession not shown of record, including unrecorded easements.

2. Any state of facts an accurate survey would show.
3. Mechanics' liens, or any rights thereto, where no notice of such liens or rights appear of record.
4. Taxes and assessments not yet due or payable and special assessments not yet certified to the Treasurer's office.

The date of the title policy is very important. The title insurance company guarantees against loss occurring because of defects existing at or before the date of the policy. Defects which come into existence subsequent to the date of issuance of the title policy are not covered.

Owner's and Mortgagee's Policies. Title insurance companies will issue policies to both the owner and the mortgagee. The fee or premium for the title policy, unlike other insurance, is paid only once and the policy continues in force without further payment. The fee, as with other insurance, is based upon the amount of insurance purchased. The owner's policy is not transferable; therefore, when the property is resold, the new purchaser should obtain a reissued title policy. The mortgagee's policy is normally transferable, so that if the note and mortgage are sold, the new mortgagee need not obtain a reissued policy, but endorsement of assignment on the policy is generally required.

It should be remembered that a "mortgagee's policy" does not protect the owner's equitable interest in the property; a mortgagee's policy will protect only the mortgagee and only to the extent of the mortgagee's interest, whatever that may be; the equity of the owner is protected only by an "owner's policy."

Of the two evidences of title discussed above, the one most commonly used, presently, is the abstract and opinion. In new subdivisions, title insurance is used extensively.

Section XI

Trust Deeds And Mortgages

INTRODUCTION AND BACKGROUND OF MORTGAGES

The purchase of real estate usually involves a considerable sum of money. Rarely is full payment made in cash. In the great majority of real estate transactions, the purchaser makes a down payment in cash and arranges for a loan to cover the balance. The financing of this balance generally involves two legal instruments: a *negotiable promissory note* and a *mortgage*. A negotiable promissory note is a writing signed by the maker containing an unconditional promise to pay a certain sum in money, payable on demand or in prescribed installments or at a fixed or determined future time, and which is payable to the order of the payee or to the bearer of the instrument. This note creates a debt and the maker is personally liable thereon. The mortgage is a legal document pledging or conveying a piece of real property as security for the indebtedness created by the note.

In the early English law, the mortgage was simply a deed which conveyed the property from the mortgagor (borrower) to the mortgagee (lender). This deed contained, either expressly or impliedly by court interpretation, a clause which defeated the conveyance of title if the mortgagor paid the debt when due. If the borrower defaulted, the mortgagee became the absolute owner of the property. Foreclosure proceedings were not necessary and did not even exist.

Thereafter, a practice arose which permitted the borrower, in cases of extreme hardship, to repay the debt after default and the mortgagee was required to accept the delayed payment and to convey the property back to the mortgagor. This right to pay and recover the property after default is known as the right of redemption, or equity of redemption, and it soon became a matter of course in all cases of default. The mortgagee then attempted to insert a clause which recited that the mortgagor surrender his equity of redemption. But the common law courts held this clause void, stating that since the needy borrower was in no position to protect himself, the court would not let the lender take advantage of him. This left the lender in a somewhat difficult position: technically, he owned the land upon default but he could not be certain whether or not the mortgagor would redeem it.

A new practice arose to remedy this situation. Upon default and upon the mortgagee filing a petition with the court, the judge would decree that the mortgagor could have only a cer-

tain amount of time, usually six months or a year, to redeem the property. After the lapse of time allotted, the mortgagor's equity of redemption was thereby barred and foreclosed and the mortgagee became the absolute owner of the property. This procedure is called strict foreclosure and still exists today in two states, Connecticut and Vermont.

Under strict foreclosure, the lender might become the owner of property worth many times the amount due, especially if the borrower had repaid part or most of the debt. On the other hand, although not so often, it was possible that the value of the property might be less than the mortgage and the mortgagee would lose the balance due, for under the old common law mortgage the lender had no personal right of recovery against the mortgagor. This resulting injustice led to the next development—foreclosure through public sale.

Up to this point, the concept of a mortgage was based on a "title" or ownership theory, i.e., that the mortgagor transferred the legal title of the property to the mortgagee. As the practice of foreclosure through public sale became more common, there emerged another concept of the mortgage, i.e., that it was not a conveyance of the land but only a lien upon the property. Thus, the lien of the mortgage was to be enforced through a public sale and not by simply giving him absolute title to the property. If the land sold for more than the debt, the mortgagee would be paid in full and something would be salvaged for the borrower. It logically followed that should the property so mortgaged sell for an amount inadequate to cover the debt, then any other resources or assets of the mortgagor should be available to the mortgagee for the satisfaction of the balance due. Today, this right for the satisfaction of the deficit from other property of the mortgagor is established through deficiency judgment and arises as a result of the liability imposed upon the mortgagor by virtue of his having signed a note which was secured by the mortgage, unless, as in Montana, the mortgage is given for the balance of the purchase price of real property. (Section 93-6008, Revised Codes of Montana). However, in Montana today, an absolute conveyance intended only as security for repayment of debt is nevertheless considered an absolute conveyance insofar as third party purchasers are concerned. (Section 52-204, Revised Codes of Montana).

Under modern mortgage law in the United States, there exists three theories as to the nature of mortgages—lien, title and intermediate theories. The majority of states have adopted the lien theory, and this is the theory in Montana. (Section 52-201, Revised Codes of Montana). The mortgage is considered to create a lien and not to convey any title. In Montana, the mortgagor is entitled to possession until he defaults and his right of redemption has terminated if he occupies the land as a home for himself and his family. (Section 93-5841, Revised Codes of Montana). The right of redemption exists for one year in Mon-

tana. (Section 93-5836, Revised Codes of Montana). Foreclosure is generally by court action and a court ordered public sale, the mortgagor being entitled to any excess funds over and above the amount of the debt and liable personally for any deficiency. The security interest owned by the mortgagee is classed as personal property and can be transferred only by assignment of the debt secured by the mortgage. When the debt is extinguished, the mortgage is extinguished, and in Montana must be satisfied by recording satisfaction in the office of the county clerk and recorder within thirty (30) days or the mortgagee shall be liable to the mortgagor for all damages resulting (Section 52-210, Revised Codes of Montana).

A minority of the states have adopted a modified version of the common law title theory of mortgages. In theory, the mortgagee is considered to have the legal title, subject only to the mortgagor's superior equitable ownership. The mortgagee upon default and before foreclosure is entitled to possession, but he must account for all rents and profits and apply them in reduction of the mortgage debt. Foreclosure is generally by legal action and a court ordered public sale. The mortgagor is entitled to any excess of funds and liable for any deficiency. Upon payment of the debt, the mortgagee's legal title is defeated. The mortgagee's interest is considered to be a real property right rather than personal property. In actual practice, the difference today between the lien and title theory is more technical than real. Some states have taken a position midway between the title and lien theories; they are called intermediate states. The trust deed involves the actual transfer of the legal title to the trustee, but the enforcement of the mortgage upon default is in the nature of a lien. The trust deed will be more fully discussed below.

MORTGAGES AND TRUST INDENTURES

Although there are other mortgage devices, the mortgage—or "regular" mortgage as it is sometimes called—and the trust indenture are the most prevalent. Both are found in Montana, but the trust indenture has only been in common use in Montana since 1963 upon enactment of the Small Tract Financing Act (Section 52-401 et seg, Revised Codes of Montana) and can be used only for parcels not exceeding three (3) acres. Deeds of trust in Montana prior to the enactment of the Small Tract Financing Act were governed only by the general law of trusts. Trust deeds herein referred to are those provided for in the Small Tract Financing Act.

A regular *mortgage* is a conditional conveyance of the real estate directly from the mortgagor (borrower) to the mortgagee (lender) to secure the indebtedness described therein. Only these two persons are parties to the mortgage.

A trust indenture or trust deed involves three parties. A Trust Deed to the trustee is a conveyance of the legal title by the borrower to a third party, which can be an attorney, a bank, trust company, savings and loan association, title insurance or abstract company in Montana. The trustee holds the title in trust for the lender called the beneficiary of the trust (comparable to the mortgagee in a mortgage transaction) to secure the payment of the indebtedness described in the trust deed.

Thus, we see that the trust deed to a trustee involves the actual transfer of title by the owner of the property to a third party who holds it in trust, according to the terms thereof, for the benefit of the lender who may also be the seller. Upon compliance with the provisions of the trust deed, the trustee reconveys the property back to the grantor or creator of the trust, who is really the buyer or borrower (comparable to the mortgagor in a mortgage transaction). Upon default on the provisions of the trust deed, the trustee, according to the terms of said deed and as provided by law, is empowered to convey the title of the property to the purchaser of the property at a public sale. In Montana, the grantor (borrower) is without right of redemption after sale of the property, and in such case must surrender possession within ten (10) days after sale. However, no deficiency judgment can be entered against the grantor if the sale does not bring sufficient proceeds to satisfy the obligation secured.

In some states, such as Colorado, a trust deed to a private trustee is deemed to be a mortgage and can only be foreclosed through the courts, but a trust deed to the "public trustee," a county official, may be foreclosed by public sale through the office of the public trustee.

When the indebtedness secured by the trust deed is paid, the procedure to procure a release thereof is to have the beneficiary execute a Request for Reconveyance, present it to the trustee, whereupon the trustee will, upon payment of his fee, reconvey the real property to the grantor. The Deed of Reconveyance should be recorded in the office of the county clerk and recorder of the county in which the property is situated.

Since the trust deed is becoming more and more popular in Montana, it is important to become acquainted with the more pertinent statutes dealing with it. (Sections 52-401 through 52-417, Revised Codes of Montana).

A mortgage shall expire eight (8) years after the entire debt is due, but the law also provides for the extension of a mortgage by the mortgagee upon filing an affidavit, in proper form, within sixty (60) days after the expiration of said eight (8) years, in which case the mortgage shall be valid for an additional eight (8) years. The mortgagee may extend the mortgage without the consent of the mortgagor.

Trust deeds and mortgages, and all other instruments affecting real property, should be acknowledged and recorded for

the protection of the holder of the interest. (Section 73-202 and 73-203, Revised Codes of Montana). A subsequent innocent purchaser or encumbrancer who has no actual knowledge of a prior unrecorded claim will be given a superior right.

USUAL ELEMENTS OF MORTGAGES AND TRUST DEEDS

The following list is intended to serve only as a ready reference to the usual elements of a trust deed or mortgage. The execution of these instruments should be carefully checked by a competent attorney or other person with considerable experience in these matters because many varied and complex details must be adjusted to fit each particular case.

1. Date. Though not essential, inclusion of the date might prevent question of controversy as to the time of the conveyance of the security interest.

2. Parties. All parties to the mortgage or trust deed must be named and clearly designated. In the mortgage, they are the mortgagor and mortgagee. In the trust deed, they are the grantor, trustee and beneficiary. The name of the grantor should be stated exactly the same as that by which he acquired title.

3. Consideration. The consideration for the mortgage or trust deed is the money loaned to the grantor or mortgagor, usually to assist him in purchasing the property. The statement regarding the consideration should contain the following:

A. Party owing the indebtedness.

B. Amount.

C. Maturity date.

D. Method of repayment of the principal amount.

E. Interest rate and time of payment.

F. Conditions of default as to principal and interest.

It is often best to include a copy of the promissory note or notes.

4. Words of conveyance. This is necessary to give the trustee or mortgagee an interest in the property which will serve as security.

5. Description of the Property. The description is necessary to identify the real estate subject to the security interest. The description used in the mortgage instrument should read the

same as that contained in the deed by which the grantor acquired his interest.

6. Conditions of the trust deed or covenants of the mortgage. Usually provided herein are such things as: the property will be kept insured, taxes and assessments will be paid, buildings will be kept in repair.

7. Method of sale in case of default. The beneficiary of a trust deed may foreclose by public sale through the office of the trustee or through the court. The mortgagee may foreclose only in and through the courts.

8. Signature is required by mortgagor on mortgage, or by grantor on trust deed. Wife of either should also sign.

9. Acknowledgment is necessary to establish the instrument's proper execution and validity, and to permit recording.

10. Recording in the office of the county clerk and recorder of the county in which the property is situated is necessary to protect the interest of the beneficiary or mortgagee against the claim of persons who may thereafter acquire an interest in the property without actual notice of the mortgage or trust deed.

In addition to the above, it may also be desired to:

1. Provide that a default continuing more than a specified time gives the holder of the indebtedness the right to declare all indebtedness to be due and payable immediately without notice.

2. Reserve the right to pay taxes if they remain unpaid when due, adding the amount so paid together with interest at a specified rate to the principal sum.

3. Require that the property must be insured in companies acceptable to holder of the indebtedness and the standard mortgage clause added to these policies. In case grantor fails to so insure, provide right of grantee to insure, adding the cost together with interest at a specified rate to the indebtedness.

4. Should a foreclosure or a trustee's sale be necessary, provide for:

A. All the costs of such a suit or suits, advertising, sale and conveyance, including attorneys', stenographers' and trustees' fees, outlays for documentary evidence and cost of said abstract and examination of title.

B. All moneys advanced by the holders of the indebtedness with interest thereupon from the time the advances were made.

FORECLOSURE

In the event the mortgagor defaults on any one or more of the covenants or conditions of the mortgage, the property may be sold through foreclosure proceedings in a court of law as prescribed by law. The proceedings are initiated by the mortgagee for the satisfaction of the indebtedness owing to him. (Section 93-6001, Revised Codes of Montana).

Trust deeds may be foreclosed by trustee's sale upon default by the grantor or his successors in interest upon notice of sale which must be (1) recorded in the office of the county clerk; (2) mailed to the grantor, his successors in interest, to others designated to receive notice or requesting notice as provided by law, and to other subsequent lien holders of record; (3) posted on the property to be sold, and (4) published for three successive weeks in a newspaper.

REDEMPTION

The grantor in a trust deed has no right of redemption after trustee's foreclosure sale. A mortgagor who has defaulted on the payments or other conditions or covenants set forth in the mortgage and who, after the foreclosure sale, wishes to reclaim his land may do so in Montana, within a period of one (1) year after the sale. This right of redemption is granted to the mortgagor by statute and requires that the principal sum together with all interest and expenses be paid. A subsequent encumbrancer, to protect their interests in the land sold, may redeem for the amount for which the property was sold together with taxes paid by the purchaser and interest, which sum will be turned over to the holder of the certificate of purchase. Other encumbrancers (redemptioners) may in turn redeem the property for the amount paid by the last redemptioner, plus the last redemptioner's lien, if prior to his own, plus taxes paid and with interest on each. If the redemption is made by the mortgagor, then such redemption will have the effect of annulling the sale and leaving the estate subject to all liens which would have existed had no sale been made, except the foreclosed mortgage which has now been satisfied. When the period for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed free and clear of all encumbrances.

THE PRINCIPAL NOTE

In the real estate financing process, the principal promissory note is the evidence of the debt for which the mortgage or trust deed on the property is the security. This note is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determined future time, a sum certain in money to the order of the

payee or to bearer. This note creates a liability on the part of the maker for which he is personally responsible. If the security is insufficient to cover the indebtedness, the holder of the note may obtain a deficiency judgment for the balance due and proceed against all other property or assets of the debtor, unless the mortgage is given for the balance of the purchase price as mentioned above.

The holder of a note secured by the mortgage or trust deed may sell and transfer the note to another. In either case, the note is endorsed over to the new holder and the mortgage or the interest in the trust deed is assigned to the new holder. The assignment should be recorded.

The reason for the requirement of a recorded assignment of a mortgage will become clear if the desirability of keeping an unbroken chain of title in the abstract is kept in mind. Unless default occurs in the payment of the note, satisfaction of the mortgage will eventually be executed. The satisfaction is executed by the legal holder of the note, who changes each time the note is transferred. A recorded assignment of the mortgage to each new holder of the note shows at any given time who is the person who must execute the satisfaction thereof. The assignment of interest in the trust deed by the beneficiary is recorded so that in case of default, the trustee knows who to serve as beneficiary with the notice of sale as provided by law. (Section 52-409, Revised Codes of Montana).

SECOND MORTGAGE

An owner of real property encumbered by a mortgage may negotiate another loan which is to be secured by a second mortgage. The second mortgage stands in a subordinate position to the first as to priority of lien claim in case of a foreclosure. The recording of the first mortgage prior to the recording of the second legally establishes the priorities of right. If the first was unrecorded but the holder of the second had actual knowledge of the existence of the first at the time of the second transaction, the first mortgage would still have priority.

INSTALLMENT CONTRACT IN ESCROW

An installment contract or contract for deed held in escrow is essentially a security device as is the mortgage or trust deed. A typical escrow contract provides that the deed to the property will not be delivered to the purchaser until the full purchase price, or some specified portion such as one-third or one-half, has been paid. This contract is not usually recorded but the purchaser is afforded more protection as against third parties if it is. The buyer goes into possession and assumes all the risks and responsibilities of ownership. He covenants to

keep the premises insured, repaired, taxes and assessments paid, etc., for the benefit of the seller. The buyer is often considered to have an equitable interest in the land in much the same way as a mortgagor.

The installment contract and deed are delivered to an escrow agent. Title remains in the seller. Upon performance of the covenants in the contract by the purchaser, the escrow agent delivers the deed to the buyer, who records it. In the event of the buyer's failure to remedy a default after notice thereof, the contract provides that all papers are to be returned to the seller and the amount paid by buyer retained by the seller as a forfeit. Thus, we see that this type of contract is but another security device that can be used in the financing of real estate.

Since financing arrangements are generally made for the benefit of the buyer who doesn't have cash in full, he generally assumes the costs of the transaction.

Section XII

Liens

INTRODUCTION

A lien is a right given by law to a creditor to have a debt or charge satisfied out of the property belonging to the debtor. For the purpose of convenience, liens may be classified into two groups: specific and general liens. A specific lien is one that attaches to and affects only a certain piece, or pieces, of property, such as mortgage, property taxes and assessments, a mechanic's lien, vendee's lien, vendor's lien, and an attachment. A general lien may attach to and affect all the property of the debtor, such as a judgment lien, federal tax liens, state tax liens, and liens for a decedent's debts.

SPECIFIC LIENS

1. *Mortgage.* One who borrows money or owes a debt may execute a mortgage on a piece of property for the purpose of securing or guaranteeing payment of the amount due the lender or creditor. The mortgage is a conditional transfer of an interest in the property and is a specific lien or claim against said property. The lien becomes null and void upon the payment of the debt. For a more detailed discussion see Section XI, Trust Deeds and Mortgages.

2. *Taxes and assessments.* Property taxes and special one payment district taxes levied according to law become a specific lien on the real property. The taxing body, usually the city or county, may take action resulting in the sale of the property if these charges are not paid.

Property subject to the general ad valorem tax is listed and assessed on the first Monday in March of the current year and the lien against the property for said tax attaches at twelve meridian on that day. Taxes levied upon real estate are a perpetual lien upon such real estate until the taxes, and penalties, charges and interest that may accrue, are paid, and such lien has priority over all other liens. Real property taxes become due in Montana as follows: one-half on or before November 30, and the remaining one-half on or before May 31 of the following year. When the first one-half installment becomes delinquent, it draws interest at the rate of two-thirds of one per cent per month, plus a penalty of two per cent.

Notice of sale of real estate, upon which taxes remain delin-

quent, is given by the County Treasurer no later than the last Monday of June of each year and such sales are held in front of the Treasurer's office in each county. Such property is sold to the persons who shall pay the taxes, interest, and penalties thereon, or the property is struck off (sold) to the county. The purchaser at the tax sale receives a certificate of sale, and if the property is not redeemed in three years, said purchaser may request and receive a deed to the property from the County Treasurer. A special procedure giving legal notice must be followed to obtain a tax deed. Real property sold for taxes may be redeemed at any time within three years after sale, or any time before notice of application for tax deed has expired. Redemption may be made by the owner, his agent, assignee, or any person having a lien or interest in such property, upon payment to the county treasurer of the amount for which the property was sold together with interest thereon from the date of sale plus subsequent taxes and interest.

Special improvement district taxes are levied by resolution of a city or town and becomes due, generally, in installments, on November 30 of each year, with interest. Such assessments are a perpetual lien against the land and have priority over all liens excepting the general tax liens. The number of installments, the period of payment and the rate of interest are determined by the cities or towns. In case of default in the payment of any installment, the county treasurer may sell the property at the same time, in the same manner and under all the same conditions and penalties and with the same effect as provided for in the sale of real estate in default of payment of the general property taxes. (See Title 84, Chap. 41, Revised Codes of Montana, not included in this manual).

3. *Mechanic's Lien.* Mechanics, material men, contractors, sub-contractors, builders and all other persons rendering professional or skilled service, performing labor upon or furnishing materials used in the construction, alteration or repair of any structure or improvement upon land may place a lien upon the said property. All such liens relate back to the time of the first commencement of work upon the property and have priority over other liens or encumbrances subsequent in time and also over prior liens or encumbrances not recorded and of which the lienor had no actual knowledge. As between the mechanic lien claimants, the order of priority is:

(1) First Class: Liens filed within thirty days after the filing of the first lien on such premises and share pro rata on foreclosure sale.

(2) Second Class: After the expiration of such thirty days, all liens filed within sixty days after the filing of a subsequent lien, and share pro rata after liens of the first class are paid.

Mechanics' liens must be filed for record, in the office of the clerk and recorder of the county wherein the property is situ-

ated, within 90 days after the date of completion of the improvement. The lien takes preference over prior mortgages and encumbrances upon the land insofar as the buildings or improvements are concerned.

No mechanics' lien shall hold the property longer than two years from the date of filing the lien, unless the action shall have been commenced within that time to enforce the lien and, also, unless a notice called a lis pendens, stating that such action has been commenced and shall have been filed for record within that time in the office of the clerk and recorder of the county in which the property is located. (See Sections 45-501 through 45-505, Revised Codes of Montana).

A mechanic's lien may be avoided by obtaining lien waivers from the party furnishing the labor or materials. There are partial and final lien waivers. For example, suppose that a subcontractor, such as a plumber, electrician, or plasterer has finished half his job and wants to be paid for that half. When you pay him, you demand from him a waiver of his lien for the work and materials actually furnished at that time. No lien is waived as to work still to be done. When final payment is made, you can then demand from him a final waiver. Thereafter, even if he must come back to repair or replace defective work or materials, he cannot claim a lien on the property.

A waiver does not release a mechanic's lien which has already been filed as required by law with the county clerk and recorder. A release or satisfaction of mechanic's lien must then be filed with the county clerk and recorder, specifically identifying the lien to which it refers.

4. *Vendee's Lien.* If the seller (vendor) defaults in his performance, the purchaser (vendee) has a lien against the property for the return of all money under the terms of the sales agreement. This is an equitable lien and is enforceable for foreclosure. (See Section 45-1105, Revised Codes of Montana).

5. *Vendor's Lien.* If the seller conveys the property to the purchaser and does not receive the entire amount of money agreed upon to be paid to him by the purchaser, the seller has a lien upon the property for said unpaid balance. Like the vendee's lien, this lien is an equitable charge and is enforceable by foreclosure. (See Section 45-1101, Revised Codes of Montana).

6. *Attachment.* An attachment is a lien placed against the property of defendant in a pending lawsuit for damages upon an express or implied contract or for debt. Montana and many other states permit the issuance of a writ of attachment before payment is due if the defendant is about to leave the state taking his property, or if he is about to fraudulently convey or transfer his property. The plaintiff obtaining the attachment must file a bond to protect the defendant against any loss

caused by the attachment in the event the plaintiff loses the case.

A *lis pendens*, technically speaking, is not a lien upon property. It is a public notice, filed against specific lands, that an action at law is pending that may affect the title to the land. For example, a mechanic's lien claimant upon commencement of his foreclosure suit, may file a lis pendens with the county clerk and recorder a few days before the expiration of his lien; and thus, by such filing, his lien is kept alive beyond the two years provided by law to allow the court to determine the validity of his claim. A lis pendens is notice to a prospective purchaser, encumbrancer or any other party in interest that a claim against the property exists and such persons can take title to the property only subject to the outcome of the lawsuit.

GENERAL LIENS

1. *Judgments.* A judgment results from the determination of the rights of the parties through an action at law. Not all judgments involve money awards, but when the plaintiff is awarded a money judgment, such judgment may become a lien upon the real property of the defendant. Montana law provides that the judgment must be entered into the judgment docket. Upon such entry, the judgment becomes a lien on all of the defendant's real property located in that county which he now owns or may afterwards acquire. A transcript of the judgment may be filed in any county in the state where the defendant owns property and the lien thus created continues for six years from the entry of said judgment in the judgment docket. (See Sections 93-5708 through 93-5712, Revised Codes of Montana).

2. *Federal Tax Liens.* Federal tax liens may attach to real property because of violation of income tax laws, nonpayment of gift taxes, or because of the transfer of the real estate upon the owner's death.

When a taxpayer is delinquent in the payment of his federal income tax, the government may issue a tax warrant which, when filed in the county wherein the taxpayer's real property is located, becomes a lien upon the real estate. Such lien is subordinate to prior liens and encumbrances.

The federal government's lien for gift taxes is a lien upon the gift property and continues for a period of ten years. This lien is subordinate to all prior liens and encumbrances upon the property.

The federal estate tax becomes a lien upon all the personal and real property of the deceased. It also continues for a period of ten years and is subordinate to prior liens and encumbrances upon the property.

3. *State Tax Liens.* Like the federal government, the state

government may also acquire liens upon real property for the nonpayment of income, inheritance and other taxes.

In Montana, the lien for delinquent income taxes, when established according to law, becomes a lien upon the taxpayer's real property. This lien has priority over all subsequent liens and encumbrances and continues for six years unless paid in the same manner as a judgment docketed in the office of the clerk of court. The state may also acquire a lien for inheritance taxes. The lien for such taxes in Montana continues for ten years and attaches to all property passed or transferred, having priority over all subsequent liens or encumbrances.

4. *Decedent's Debts.* Upon death, the decedent's real property passes to his devisees if he leaves a will or to his heirs at law if he dies without a will. Title to the real property vests in the devisee or heir at law subject to any existing liens or encumbrances, and subject also to rights of creditors of the estate who file claims within four months of first publication of notice to creditors during the administration of the estate. Debts against the estate are paid out of either real or personal property. Thus, title to a decedent's estate may be subject to a lien in favor of the creditors of the estate.

NOTE: The above general liens are all enforceable through foreclosure and public sale.

Section XIII

Real Estate Lending

THE MORTGAGE MONEY MARKET

1. The supply of funds and the interest rate.

The market place, in which the demand for and the supply of money are established, is not as well defined in time and place as is true of commodities or other goods and services. It is neither a definite time "when" nor place "where" but indeed those who borrow and those who lend do get together to set the rate of interest.

a. Competition for savings.

Whether for people or commerce, housing is considered in our economy to be a part of the investment function of our gross national product. Like other investment elements it grows out of the fact that our economy provides our essentials and is still able to create a reserve usable for less urgent consumables. There is much competition for custody of this excess among various investment alternatives and those who save in excess of current immediate needs have bountiful outlet for their accumulations of liquid funds. There is a myriad of outlets for savings from the appeal of commercial banks, mutual funds, savings and loan associations, mutual banks, insurance companies, and government bonds. In some instances the saver will provide an outlet for housing paper directly but for the most part mortgages on real property arise from the institutions which successfully accumulate these reserves by competing for the funds.

b. The interest rate.

Interest itself is "money paid for the use of money" but borrowers and lenders alike recognize that there is a rental component, probably best exemplified by government bonds; and risk component which serves to increase the total interest rate in an amount commensurate with the risk. Money rates do not have any uniformity across our geographical or economic spectrum. These rates vary in time and place and have only a somewhat general upward and downward trend in common. Improved market mechanisms for real estate mortgages in both the public and private sectors have increased the length of time for which real estate loans are considered reasonable. The amount of the loan as a per cent of value of the property has likewise increased, but if modern methods of handling mort-

gage paper had not developed, the interest rate could be substantially higher. The principle of *amortization* serves both borrower and lender as it provides for periodic repayments on the loan soon after the loan goes in force, part of which is principal and part element interest cost.

2. The government and the mortgage money market.

Current monetary theory is being looked upon as a tool of control of the undulations of the business cycle. The concept of the "new economics" has been that this control was a function of a changing tax rate and governmental spending, or fiscal techniques. Many feel that the real answer is the judicious use of both monetary and fiscal policy.

The Federal Reserve System had as one of the reasons for its creation, an increase in the elasticity of the money supply in accordance with the changing needs of the economy. This need is not uniform; this is attested to by virtue of the fact that there are twelve Federal Reserve districts with some autonomy left to the districts to meet local needs. Overall, the Federal Reserve System has six monetary tools used to give elasticity to the money supply; three *general* and three *selective*. The three *general* tools and their details are as follows:

a. Open Market Operations

This is a device of the Board of Governors of the Federal Reserve system to change the money supply by the simple decision to buy and sell bonds. Despite this simplification, the rationale is that the Federal Reserve Board of Governors in selling bonds to the people to absorb funds thus preventing their introduction into the market. If conditions dictate easing of the money supply, the Board buys bonds and thus people have money in their place—money they can spend and put into the economy. This choice is considered to be the "Fed's" most potent weapon in controlling the money supply.

b. Changing the Discount Rate

Here discount is best thought of as the rate of interest charged by the Reserve system on loans to its member banks. When the "Fed" increases the discount rate banks are discouraged from borrowing from the "Fed," and may charge more in their own loan transactions to make up for the higher rates charged the banks.

c. Changing the Reserve Requirements

Not all banks belong to the Federal Reserve System but the very large banks invariably do belong and most of the transactions in terms of dollar amount flow through member banks. Members of the "Fed" must keep a certain percentage of their demand deposits with the Federal Reserve District bank in that district where they have membership. This percentage is es-

tablished by the Federal Reserve System and differs for city banks than for country banks. The Congress sets the outside limits within which the "Fed" can change the reserve requirements of the members in accordance with certain needs. A member bank can loan only from its *excess reserves* and loans from these excess reserves will consequently lower the amount of reserves on deposit with the district bank. When loans approach an amount which serves to wipe out its excess reserves on deposit, that individual bank is said to be "loaned up" and can make no more loans until its excess reserves are replaced. Space does not permit development here but the total banking system is said to be able to do what one single bank cannot do; i.e., loan a multiple of its excess reserves and the multiple is somewhat inaccurately defined as "the reciprocal of the reserve requirement." Simply put if the reserve requirement is 12% of deposits, then the banking system can make loans in an amount equal to eight times the amount of these excess reserves. The Federal Reserve System by increasing reserve requirements can be extremely potent in its ability to reduce lending in member banks and to the extent these member bank loans are for real estate purposes the increasing of the reserve requirement in turn reduces money available for real estate loans. The "Fed" *has* been found effective in damping the demand for money by raising the reserve requirements and thus increasing its cost to the borrower. It can do in time of inflation what it cannot do in time of depression; i.e., serve as an effective tool of cycle control.

There are likewise, three selective controls at the behest of the "Fed." They are as follows:

(1) Moral Suasion: This contrivance of control asks the member bank management to "lean against the economic winds" by discouraging loans in times of hyper-activity in the economy and encourage safe loans in times of recession. This is the "jaw bond" approach to the problem of using money to redress the business cycle. By coming in on the supply side the results of moral suasion help to effect the cost of money.

(2) Margin Requirements: The second selective control is the right of the "Fed" to control margin requirements on stock purchasings. Persons buying stock without full payment to the broker place an upward pressure on common stock prices. Stock prices have long been considered a sensitive barometer of the economic well-being of this nation. If the economy "heats up" it is argued that stock prices will be reduced if they have to be covered in full amount of the price.

(3) Consumer Credit Control. The third selective control is the right of the "Fed" to control the amount of the down payment and the acceptable period of time to pay off unpaid bal-

ances on purchased consumer goods—autos, appliances, etc. It has been used primarily in time of national emergency, but can conceivably be a tool of selective control at any time.

3. Effects of tight money.

If the "Fed" presumes the need of "tight" money in what it fears to be an overheating economy it sells bonds, raises discount rates, discourages bank loans, demands cash for stock purchases and makes consumer purchasing difficult. It also may use any combinations of these tools depending upon its interpretation of the need. The theory is here to raise the interest rate by decreasing the quick availability of money and a reduced demand follows as the economy loses some of its glow.

Were the banks the only source of money this system might have a dramatic impact upon the real estate market. In truth restrictions in commercial bank charters, whether federal or state, as to the holding of real estate paper have caused borrowers to look to other sources of capital. Efforts of the Federal Reserve System to control prices also effect the cost of money for real estate financing but not as completely as would be true if all such loans had to come via commercial banks.

THE VETERANS ADMINISTRATION LOAN

Originally the VA loan was a *guaranteed* loan only but since 1950 the loan can also be made directly to veterans. The intent and purpose was that loans to qualified veterans on property meeting VA standards would be guaranteed by the VA. A qualified veteran must have been released from the service with other than a dishonorable discharge or undesirable separation. Property acceptable to the VA must have a Certificate of Reasonable Value resulting from a VA inspector's review of the property. The veteran must pay no more than the amount of the certified value of the property although he can pay less than this amount. Currently loans are guaranteed up to 60% of the value of the subject property but not in excess of $12,500. The following schedule is a guide to the veteran interested in attaining this kind of loan:

Dates of active duty by the veteran to be eligible for the VA loan	Respective date by which an application for loan must be made
(1) Sept. 16, 1940 to July 25, 1947	(1) July 25, 1972
(2) June 27, 1950 to January 31, 1955	(2) January 21, 1975
(3) After January 31, 1955	(3) March 3, 1976

Loan may be made to the veteran only once and the loan may be for his residence or to finance a business opportunity.

THE FEDERAL HOUSING ADMINISTRATION LOAN

The FHA makes *insured* loans. Loans are made directly to acceptable borrowers by institutional investors on properties of specific standards of construction and location. The FHA does not make the loan, it simply insures 100% of the loan made by an approved lender. The FHA program was initiated in June, 1934 to improve housing conditions in the United States and to aid in providing an adequate home financing system and to stabilize the mortgage and residential real estate market. The program has been enlarged upon a number of times since its inception to meet demands for housing for military personnel, critical defense areas as well as the need expressed for condominiums and experimental housing ventures.

The amortization system of loan repayment drew substantial support from the FHA loan program. These monthly loan payments include: (1) interest, (2) principal, (3) FHA mortgage insurance premium of ½ of 1% on outstanding balances, (4) one-twelfth of annual taxes, hazard insurance, and special assessments.

The rate of interest allowable under FHA and VA loans is regulated by the federal government. No meaningful generality can be made as to the specific interest rates applicable or lending rules, except to say that interest rates have inched upward. Those who wish specific current information about these programs should resort to the literature available from both the Veterans Administration and the Federal Housing Administration or seek out qualified persons in lending institutions.

FARMERS HOME ADMINISTRATION LOAN

The Farmers Home Administration, under provision of the Housing Act of 1949, as amended, makes and insures rural housing loans. Exact information can be attained at local Farmers Home Administration Offices.

Junior Lien Financing

Junior lien financing is not currently popular. Many financial institutions are forbidden trafficking in these securities. The amortization techniques of this day with larger loans to value and longer term for repayment have helped immeasurably to relieve the need for junior liens because lower down payments are required. Sometimes an individual who sells his property where the existing mortgage is assumed by the new owner will find that he must take a "purchase money mortgage" in order to make the sale. These are usually modest in amount and relatively short term. The unsatisfactory history of second mortgage paper still echoes from the depths of the Great Depression. No doubt this memory has augered against the creation of an orderly market mechanism for junior lien paper and

those who wish to translate such a holding into cash are usually faced with a demand for a very high discount.

THE SECONDARY MORTGAGE MARKET

The development of a secondary mortgage system for all types of sound real estate loans has been primarily through federal government functions. As indicated above, primary lenders can attain federal insurance on their loans which has an effect of providing a wider market for real estate loans and thus becomes something of a secondary mortgage market.

1. The Federal National Mortgage Association

Probably the base known truly secondary mortgage market is to be found in the Federal National Mortgage Association, better known as "Fanny May." A widely established private sector mechanism to make a market for real estate paper did not develop after the Great Depression and Fanny May came about under Congressional authority within the Reconstruction Finance Corporation in 1938. Historically the government has made a market for the purchase of primary mortgages on real estate. Those with large blocks of first mortgage real estate paper could dispose of it to Fanny May and thus continue to loan to meet primary loan needs. The exact machinations of Fanny May are not important here; suffice it to say that this governmental agency could borrow on its bonds and buy real estate mortgage paper with a wide enough margin of difference in interest rate to make it economically feasible to do so and still fill a very great need in real estate finance. Since its inception it has processed millions of dollars in mortgages by purchase from primary lenders who had made loans in accordance with standards acceptable to Fanny May. Currently Fanny May is gradually divesting itself of its function of purchasing first mortgage paper through funds from the sale of its bonds and is relinquishing this market to money provided from the private sector of economy.

Somewhat parallel to Fanny May is General Mortgage Insurance Corporation found in the private sector of the financial world. GMIC has several newer and less well known competitors who are also venturing into the field of guaranteeing real estate paper. The function of all these is to secure unpaid balances on real estate loans to the lender. GMIC is different from Fanny May in that it pays all the first 20% of the money lost on an insured mortgage and the lender participates in the final 80% of the loan in a ratio of 4/5 to GMIC and 1/5 to the lender. Historically there has been some effort of others to provide modest outlet for secondary mortgages. Since 1913, commercial banks have been able to maintain liquidity privilege through discounting certain paper with the "Fed." Similarly the Fed-

eral Home Loan Bank was established in 1932 with a purpose to provide liquidity to member institutions. Although savings banks and insurance companies can join the FHLB system few have done so and there is a relatively high concentration of savings and loans in the FHLB membership. The FHLB has helped provide its members liquidity more via loans than by repurchase of their loans. This concept may change but if so it will do so slowly.

2. Institutional Investors

Institutions without recourse to the Federal Home Loan Bank systems have not had direct and assured means of liquidity for funds committed to real estate mortgages. Mortgage bankers are not eligible to membership in these organizations. Insurance companies could use the facilities of FHLB but are loathe to do so when it is so closely identified with the savings and loans of the nation. Fortunately insurance companies are uniquely qualified to take and keep long term real estate loans and to the extent their charters permit it, they have furnished a market. They have not had elaborate need to discount their holdings to others in the post war period and indeed do provide a secondary market of some smaller investors. Because the owning of real estate and the holding of real estate paper involves risks associated with declines in real estate values and because real estate ownership has been more lucrative, insurance companies have tended somewhat to think of their contribution to the real estate market in terms of ownership.

3. Other investors

The exact amount of real estate paper held by individuals is not known. It is usually included in the statistics as "individuals and others" and thus is a residual. The best estimates seem to be about 15 to 20 per cent of the total loans made fall into this classification although it is also true that the "other" mentioned above probably are private profit-oriented business concerns whose primary function is not lending money on real estate. They are merely finding a worthwhile outlet for excess cash. Individuals are somewhat unwilling "lenders" by their selling of real property on a contract. The 29% income tax rule has contributed to this lending in a period of rising prices. There is also the tax avoidance technique which adds to the dollar volume of individual lending. This comes by virtue of a gift of real estate to another for, say, $15,000 placing the given in jeopardy of the $3,000 per year per person limitation in the Estate and Gift tax law. Making the gift and taking a mortgage back on the property and forgiving $3,000 of the mortgage each year avoids this problem, but it also increases the values listed under "individual lending." No provable generalization can be made as to the prospects for future growth in this kind of real estate loans.

Trust departments, whether of a commercial bank or other financial institutions, must comply with the terms of the trust document made by the trustor. Some trust articles forbid real estate financing, others are silent as to the matter or encourage it. The extent to which they are permitted to engage increasingly in this kind of financing serves to add to the value of funds entrusted to their care. Pension funds bulk large in modern finance and trustees of these funds in turn find real estate mortgages acceptable. Modest though financing efforts by trustees is found to be, currently one may presume that this source of mortgage funds will grow as demand for outlet of real estate finance paper increases.

4. Discounts

Real estate mortgages do not always travel in commerce at the full value of the unpaid balance. In times of "tight" money particularly, liquidity may well be worth the loss sustained when mortgages are sold to others for cash at a substantial reduction from the face of the mortgage or its unpaid balance. Junior liens have already been noted to be subject to considerable discount when they move in commercial circles.

The principle of discounting is also applied when subdividers want to clean up "tail end" lots after the bulk of the lots of a new subdivision have been sold. One has the practical problem of avoiding a discount on these last lots in an amount which brings their value below existing unpaid balances on lots previously sold on contract.

MORTGAGE BANKING

1. Finding and servicing the mortgage.

The mortgage banker aligns himself with the principles and traditions of the Mortgage Bankers Association of America. The number of mortgage bankers has increased about 50% since the end of World War II and many concerns today have only 10 to 15 years longevity.

Mortgage bankers like many other financial institutions "live by their wits" which is not any reflection on their honesty, integrity or the worth of their service. It is, rather, an admission that they are essentially merchandisers of mortgages. They are "finders" of mortgage money needs and paid a fee for such finding. More than this they service mortgages made during the period the loan is "on the books," for which they are paid a fee annually. Mortgage bankers may have an ongoing commitment which disposes of all the mortgages they originate on local residential property which meet certain minima as to construction, location, and borrower characteristics. Sometimes they handle a single mortgage by equating an individual home-purchasers need with those who have reserve funds. Mortgage

bankers will at times use their own capital to make loans and carry the paper themselves to its maturity; they may dispose of it when they find a buyer who will permit them a profit. Mortgage banking concerns often add to their income by performance of other functions associated with the real estate business. They may have a real estate sales department, appraisal department, real estate management department or operate as an insurance agent or broker.

2. The advance commitment

The "advance commitment" is a generalized name which describes any statement on the part of a lender that he will provide funds for a real estate venture. It is usually a statement by a quickly identifiable lender but could be a statement between two persons of which neither is regularly a lender or a builder. The most common application of the term is akin to attaining a line of credit or a prearrangement with your lender as to the conditions under which he would be willing to finance your real estate operations. Builders in mass housing projects may attain a "take-out letter" with a lender where a number of houses are to be built—perhaps $100,000 worth. If each home is to carry a mortgage of $10,000 the builder attains assurance that the lender will take over the mortgage on each house as it is completed and purchased. The terms under which a take-out letter operates are detailed and specific and in general serve to increase construction totally in our economy.

3. The standby commitment

Advance commitments tend to be more difficult to attain in a period of rising interest rates for such advances may render agreements to provide funds at present prices inadvisable. In the absence of a certain market for the mortgage once construction is complete, the mortgage banker or the builder will accept an alternative way of disposition. To do so will call for substantial discount. Whichever one is financing construction may feel that a more desirable buyer can be found later but before his commitment period expires. He will take advantage of the standby commitment as a kind of stop-gap arrangement to guarantee liquidity.

4. The short term construction loan

Construction loans operate just as the name implies; i.e., to provide money before the dwelling is completed and probably at intervals in which the value of the property is in excess of the amount loaned. A commonly accepted technique is to ask the builder, whether a private party building for his own usage, or a professional builder to have the basement in and the false floor in place before a first installment of the loan is made. Considerable amount of this loan is based on the value of the

real estate itself. The second stage of construction acceptable for further advance of money exists when the house is "in the dry" with permanent partitions in place and before plastering or dry-wall application. The final portion of the total loan is advanced when the house is ready for occupancy. There are deviations from this standard involving both the number of stages and the percentage of completion before the money is advanced. This can be a function of the pretentiousness of the structure, the credit rating of the owner or builder, the percentage by which the amount of the loan lags below the values involved. Usually these construction loans call for inspection by a representative of the lender to see that the stages of construction square with the terms of the agreement as well as to make observations about the general quality of the workmanship or to become apprized of any adversity in the loan. There are fees associated with this function and a permanent final loan is made for the total amount agreed upon when construction is complete. The builder or owner pays interest only on that portion of the total money he uses during the stages of construction and often the rate of interest for the construction loan is higher than that of the permanent mortgage to reflect the degree of risk.

5. Mortgage warehousing

Mortgage warehousing grows out of the functions of a mortgage banker. He may require financing to expedite the finding, sale and distribution of mortgages as he moves them along to permanent investors. The concept of warehousing grows out of the temporary characteristics of this advance made to the mortgage banker as the mortgage moves from finder to ultimate lender: (1) committed technical warehousing, (2) uncommitted technical warehousing and (3) committed institutional warehousing. They are treated below.

(a) Committed technical warehousing. This is the most common of warehousing loans and has had long tenure. This is simply an arrangement in which commercial banks lend to the mortgage banker to provide financing in the interim between the time of payment for construction and the time when the mortgage banker delivers perfected mortgages to the permanent investor. This process exists when there has been a prior commitment of the investor to purchase the mortgage when it is finalized.

(b) The uncommitted technical warehousing machinations are exactly the same as the committed technical warehousing device except that there is no previous agreement in existence from a permanent investor to pick up the loan from the mortgage banker. In this instance the banker serves only to provide a standing commitment to take this paper, usually at a discount, at a time when a permanent mortgage is desired. It is relin-

quished when the mortgage banker finds a permanent home for the mortgage elsewhere.

(c) The committed institutional warehousing device is of recent origin and is made to large institutional investors rather than to mortgage bankers. Its purpose is to give more flexibility in the arranging for mortgage investments by providing these institutions investible funds to be repaid later out of the receipts of funds in the usual course of the business. These are loans made by commercial banks for longer duration than their counterparts—usually from a year to eighteen months. Bond prices have reduced in recent years and institutional investors have not had ready access to the sale of such fixed income securities to meet the demand for funds required for advance commitments made. Where cash inflows do not meet expectations institutions resort to this alternative as a source of funds.

Section XIV

Truth-in-Lending Law

The new Federal Truth-in-Lending Law, effective July 1, 1969, applies to many real estate transactions but never to those involving full payment of the purchase price at the time of sale. At the time of this printing, the interpretations of Regulation Z of the Code of Federal Regulations (12 CFR 226), issued by the Board of Governors of the Federal Reserve System to implement the law, state that the regulation applies only to persons who, in the ordinary course of business, regularly extend, or offer to extend, or arrange, or offer to arrange, for the extension of consumer credit. Basically, the law provides that "finance charges" must be disclosed to the buyer. Although there is some disagreement among authorities, it appears that where disclosure is required in a real estate transaction the following should be included in a separate statement to the buyer: (a) Balance of purchase price after earnest money or downpayment, (b) The dollar amount of all interest that will be paid if payments are made when due, (c) The annual percentage rate, (d) Buyer's debits at time of closing, (e) A simple statement of how payments are to be made, and (f) A statement of penalty obligations imposed in the event of any default.

Where disclosure is required, there must also be a clear identification of collateral or property encumbered by the loan; however, the property may be described by reference to a copy of the contract or loan instrument attached to the statement. In cases where disclosure is required, the buyer or debtor must also be furnished with a form called "Notice of Right of Rescission," which should be furnished to each buyer or debtor in duplicate.

Because the application of this new law is not yet fully defined, it is recommended that real estate brokers and salesmen maintain close contact with their attorneys to keep abreast of developments.

The following forms are offered as examples for use in complying with the Truth-in-Lending Law, however, it is further recommended that an attorney's counsel be obtained to be certain that the proper form is used for a particular transaction.

Contract for Deed ☐
Mortgage ☐
Trust Indenture ☐

STATEMENT OF CHARGES UPON INSTALLMENT CONTRACT FOR DEED, REAL PROPERTY MORTGAGE, OR TRUST INDENTURE

_____ _____
(Date of Transaction) (Date Disclosures Made to Buyers)

Buyers: _____

Sellers or Lenders: _____

Common Description of Property _____

1. Purchase Price of Property ..... $ _____

   Less: Earnest Money ..... $ _____

   Downpayment ..... $ _____ _____

   Amount Financed ..... $ _____

2. The dollar amount of interest you will pay on this contract or loan, assuming all payments are made when due, is ..... $ _____

3. ANNUAL PERCENTAGE RATE ..... _____ %

4. Insurance premium payable _____ (i.e., FHA,
   (monthly, annually, etc.)

   life, health & accident, etc.) ..... $ _____

5. Escrow payments _____ for future payments
   (monthly, annually, etc.)

   of taxes, insurance premiums, utilities, etc. ..... $ _____

6. Charges made in addition to interest are as follows:

   a. Prepaid Real Estate Taxes ..... $ _____
   b. Prepaid Fire Insurance ..... $ _____
   c. Property Appraisal ..... $ _____
   d. Credit Report ..... $ _____
   e. Survey ..... $ _____
   f. Recording Costs ..... $ _____
   g. Escrow Charges ..... $ _____
   h. Attorney Fee for Closing ..... $ _____
   i. _____ ..... $ _____

7. Loan is payable in _____ consecutive _____ (monthly, annually, etc.) installments of $_____ each, commencing on _____, and on the same day of each subsequent _____. If such payments do not pay the contract or loan, a Balloon Payment of $_____ is due after last installment. Balance due may be extended at then current interest rate if credit continues acceptable.

8. The contract or loan provides that in the event the Sellers must pay delinquent taxes or insurance premiums that Buyers will be required to repay such amounts, together with interest thereon at the rate of _____% per annum.

9. No prepayment charge is required for any accelerated payments.

10. Upon foreclosure after default, all payments theretofore made by Buyers (borrowers) shall be forfeited to Sellers (lenders) as liquidated damages.

ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES

The undersigned, BUYERS (BORROWERS), do herewith acknowledge receipt of the DISCLOSURES contained herein and in the Contract for Deed, Note and Mortgage or Note and Deed of Trust. They further acknowledge that at the time they received a copy of this Statement and of said Contract, Note and Mortgage, or Note and Deed of Trust, such forms were complete and filled-in, and that all blanks in such forms were filled in prior to their executing the same.

_____

(WITNESS) Date Disclosures Received Signature

_____

NOTICE OF RIGHT OF RESCISSION

_____
(Identification of Transaction)

NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW:

You have entered into a transaction on _____ which may result
(Date)
in a lien, mortgage, or other security interest on your home. You have a legal right under federal law to cancel this transaction, if you desire to do so, without any penalty or obligation within three business days from the above date or any later date on which all material disclosures required under the Truth in Lending Act have been given to you. If you so cancel the transaction, any lien, mortgage, or other security interest on your home arising from this transaction is automatically void. You are also entitled to receive a refund of any downpayment or other consideration if you cancel. If you decided to cancel this transaction, you may do so by notifying:

_____
(Name of Creditor)

at _____
(Address of Creditor's Place of Business)

by mail or telegram sent not later than midnight of _____. You
(Date)
may also use any other form of written notice identifying the transaction if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below. For your protection, the use of registered or certified mail with return receipt requested is suggested.

I hereby cancel this transaction.

_____ _____
(Date) (Customer's Signature)

I, the Customer, hereby acknowledge receipt of 2 copies of the aforesaid Notice of Right of Rescission which have been given unto me this

_____ day of _____, 19_____.

_____
(Customer's Signature)

EFFECT OF RESCISSION. When a customer exercises his right to rescind under paragraph (a) of this section, he is not liable for any finance or other charge, and any security interest becomes void upon such a rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the customer any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the customer, the customer may retain possession of it. Upon the performance of the creditor's obligation under this section, the customer shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the customer shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the customer, at the option of the customer. If the creditor does not take possession of the property within 10 days after tender by the customer, ownership of the property vests in the customer without obligation on his part to pay for it.

Section XV

Supplementary Methods of Financing

The following supplementary methods of financing have advantages which can promote a widespread ownership in real estate. However, this section is merely to acquaint the licensee with the existence of such methods and to make the most primary explanation. The licensee must research and study extensively to be competent in the field of finance.

INSTALLMENT CONTRACTS

This instrument has been previously described in Section V as a security device. Its most common application is in the intance where the buyer wishes to go into possession but has little money to invest. The seller permits this under a contract to provide a deed at a later date, but retains title until the contract is paid in full. The seller thus is actually doing the financing which may in many cases be supplementary to an earlier and lesser encumbrance which the seller is obligated to pay. This instrument, although extremely popular, is full of pitfalls for both buyer and seller and may be used under certain circumstances to the injury of either. The broker should be thoroughly familiar with the effects of the installment contract before using it.

COLLATERAL LOANS

When the buyer is unable to pay the cash difference between the first mortgage note (which is in the amount of the appraised loan value) and the purchase price of the property, c*ollateral security* (in addition to the trust deed) may be given the lender so that he will increase the amount of the first mortgage. This is done when the seller is reluctant to take back a second or subordinate purchase money mortgage.

SALE AND LEASE-BACK

In recent years an adaptation of principles well known to those acquainted with real estate finance has received wide acclaim as a new method of financing business property. It contains two steps which are taken simultaneously, although they appear to be separate and distinct. First, an institution, such as a life insurance company, a college or university, a religious body, or a charitable institution with funds to invest,

purchases the real estate owned and used by a well-established business corporation—usually a retailer or a manufacturer. Second, the property is leased back to the seller by the purchaser. From these two steps we obtain the name—"sale and lease-back."

SYNDICATION OR JOINT VENTURES

When the purchase of real estate is made primarily for investment purposes, financing is often conducted by a group instead of by an individual. One person may not have sufficient capital for the purchase of the desired equity; therefore, two or more persons may join in the purchase and take title in common (trusteeships are often used). Pooling money in this fashion makes it possible for a person of limited financial means to share in the profits of a real estate investment.

REAL ESTATE INVESTMENT TRUST

This type of association or unincorporated trust has been created by federal statute to encourage the pooling of small savings by exempting this trust from paying a corporate income tax. The title to the property or properties will be placed in the name of one or more trustees and the beneficial ownership must be in the hands of 100 or more shareholders. The shares are transferable but no five persons may own directly or indirectly more than 50% of the trust. To avoid paying corporate income tax, the trust must engage only in real estate investment and not be in the business of buying and selling except in the normal course of exercising the duties of a trustee. The rules of the Internal Revenue Service must be followed to maintain the tax exempt status. Registration with the Securities Exchange Commission is also necessary.

Section XVI

Closing Statement

A closing statement is simply a financial statement showing all the debits and credits of the real estate transaction as they affect the sellers and the buyers. Included in this section is a closing statement that can be used, however, it is not implied that this is a recommended form. Many real estate brokers in Montana have their own or a similar form which they prefer. The purpose of the form is to help the broker to remember possible entries but the object of the closing statement is to present the transaction as completely and understandably as possible. Experience will teach the real estate broker or salesman of the form that suits him best.

A PROPOSED REAL ESTATE TRANSACTION

You, the broker for Ajax Realty Co., have secured an exclusive listing from Cecil E. and Dollie Doe on a property located at 100 Easy Street, Hometown, Montana, to be sold at a listed price of $15,000.00. On August 17th, you secure a written offer from Robert A. and Ruby H. Rowe with a deposit of $900.00. This contract was submitted to the sellers and it was accepted by them the following day. The sellers have requested that you obtain the abstract from the loan agency, to have it brought up to date and to take the cost out of the settlement when the sale is closed. Upon the buyers' request, you deliver the abstract to their attorney for examination. A few days later the attorney notifies you that he has passed the title as marketable. You have contacted all parties concerned and set 2:00 P.M. of September 15th as the time of the closing in your office.

The present loan is secured by note and mortgage with a balance owing of $6,750.00, and which includes all interest charges to September 15th. The present loan is not sufficient to finance the transaction and you have been instructed by the buyers to secure a new loan of $10,500.00 and have secured a commitment from the Liberty Loan Company for this amount. You then make arrangements with the present holder of the note and first mortgage to pay it off September 15th. The terms of the contract also state the sellers are to accept a note secured by a second mortgage in the amount of $1,800.00 as part payment on the sale.

On the morning of September 15th, you secure the following information to be used in preparing the closing statement:

1. The buyers want to pay all that they will owe for the property, e.g., title examination, recordings, loan fees and all other expenses connected with the purchase of the property, in one lump sum.

2. The sellers want you, as broker, to deduct from the buyers' final payment all the expenses owed by the sellers, including releases, abstracting, commission on sale, and taxes.

3. The attorney's charge for the buyers' examination of the abstract is $35.00. The attorney for Liberty Loan Company charged $20.00 for the examination of the abstract.

4. Commission on sale is to be 6% or $900.00.

5. Recording fee on warranty deed will be $2.00.

6. Recording fee on new first and second mortgages will be $8.00

7. Execution and recording of release of former mortgage will be $2.00.

8. Abstracting fee for bringing abstract to date and certification, $35.00.

9. Taxes which were payable the year before amount to $273.12 and have not been paid. The broker is to credit the buyers for such amount plus penalty and interest. Taxes for the current year, which become payable November 30th, are to be prorated to settlement date, using the $273.12 figure as a base.

10. The charge of the Liberty Loan Company for making the $10,500.00 loan is 1% or $105.00.

11. Meter readings as of September 15th show sellers owe $15.85 for power and light, and $6.86 for water.

12. A fire insurance policy for $12,000.00 was written on April 1st of the preceding year at a paid premium of $148.32 for three years. This is to be transferred to buyers and prorated.

EXPLANATION OF CHARGES

(Read in conjunction with the closing statement on pages 96, 97)

Since the broker is accounting for both buyers and sellers in completing the settlement, the closing statement shows a listing of credits and charges for both parties.

When the broker has completed the transaction, he generally has taken on certain obligations for both buyers and sellers by advancing fees for recording, abstracting, paying off former

trust deeds or mortgages, paying taxes for preceding years, etc., and these should be reimbursed at the time of closing. Sometimes, however, the parties prefer to handle the payment of these amounts themselves.

1. *Selling Price.* The full amount of the selling price of $15,000.00 is the first entry on the closing statement.

2. *Loan.* The $10,500.00 loan received from Liberty Loan Company is applied $6,750.00 as a buyers' credit to satisfy the former mortgage and the balance is applied as a cash payment to sellers. Sometimes an existing mortgage is assumed and the property sold subject to it because of the lower interest rate of most old mortgages. The difference must then be made in cash, or part cash and part deferred payments. Here the buyers also gave the sellers a second mortgage of $1,800.00 and it is also shown as a buyers' credit.

3. *Deposit.* The procedure upon the securing of a deposit is for the broker to hold the deposit in a trust account, subject to the completion of the transaction. The deposit so held is also a credit to the buyers.

4. *Examination of Title.* When the abstract of title, certified to date, is delivered to the buyers or their attorney for examination, any charge for the examination must be paid by buyers, and since in the above case the broker is to collect this charge ($35.00) and make payment direct to examiners, the charge is made to buyers as a debit. Also note that the Liberty Loan Company wants to protect its interest by having their own attorney examine the abstract. As above, this is chargeable to the buyers ($20.00 added to the above $35.00, totaling $55.00).

5. *Commission on Sale.* This would be a charge to the sellers.

6. *Abstracting Fees.* Since in this sample transaction all payments are to be made through the broker for both buyers' and sellers' expenses, the charge for bringing the abstract to date would be a charge to the sellers. Continuation of the abstract after sale is generally required by the loan company and would be charged to the buyers as a buyers' debit unless handled directly by the loan company, as we assume is the case here.

7. *Recording Fees.* Recording of the warranty deed should be charged to the buyers. Recording of the mortgage would usually be charged to buyers unless there is a different agreement between buyers and sellers. Recording of release of mortgage would be a charge to sellers. Recording costs are figured at $2.00 per page.

8. *Attorney's Fees.* Cost of preparation of warranty deed is borne by sellers and credited to buyers. Cost of preparation of

mortgage between buyers and sellers is borne by the buyers and, therefore, shown as a buyers' debit.

9. *Loan Company Fee.* The loan is being made by the buyers and, therefore, the fee for the loan company's service should be debited to the buyers.

If notary fees are charged, such fee is chargeable to the person or party whose signature is being acknowledged. Where escrow fees are involved, they are charged to buyers unless otherwise agreed by the parties.

REAL ESTATE BROKER'S CLOSING STATEMENT

Date: September 15, 1969

Sellers: CECIL E. DOE and DOLLIE DOE

Buyers: ROBERT A. ROWE and RUBY H. ROWE,

Description: Lots One (1) and Two (2) in Block Three (3) of the Optimistic Addition to the City of Hometown, County of Opportunity, State of Montana, commonly known as 100 Easy Street, Hometown, Montana.

Selling price and terms: $15,000.00; $900.00 earnest money; existing mortgage of $6,750.00 to be paid off; $1,800.00 second mortgage to sellers; balance in cash.

Has all insurance been transferred? Yes X No ___

Will buyers let us handle insurance renewal at time of expiration? No

Abstract (X) Title Insurance ( ) delivered to Liberty Loan Company.

Purchase price			$15,000.00
Buyers' Credits:			
Earnest money deposited		$ 900.00	
Mortgage (contract) given to sellers		1,800.00	
Taxes assumed on prorate			
1968	$273.12		
Penalty and Interest 1968	17.29		
1969 (17/24th of year)	193.46	483.87	
Utilities charges assumed		22.71	
Former mortgage paid off		6,750.00	
Total credits			$ 9,956.58
			$ 5,043.42

Buyers' debits:		
Unused insurance premium	$ 76.22	
Advanced by broker on behalf of buyers:		
Attorney fee, preparation mortgage (contract)	25.00	
Recording warranty deed	2.00	
Recording two mortgages	8.00	
Liberty Loan Co. charge	105.00	
Abstract examination by attorneys	55.00	
Total debits		$ 271.22
Balance due from buyers in cash		$ 5,314.64
Balance received from buyers in cash		$ 5,314.64
Earnest money held in trust by broker		900.00
		$ 6,214.64
Less broker's commission and costs advanced:		
Advanced on behalf of buyers (see above)	$ 195.00	
Abstract continuation	35.00	
Attorney for preparation deed	7.50	
Recording satisfaction of old mortgage	2.00	
Broker's commission	900.00	
Total costs		1,139.50
BALANCE DUE TO SELLERS		$ 5,075.14

The foregoing statement is hereby certified to be correct.

AJAX REALTY CO. By: John Fireball Broker

Receipt of the foregoing statement acknowledged September 15, 1969

Robert A. Rowe Buyer

Ruby H. Rowe Buyer

Receipt of $5,075.14 is hereby acknowledged in full settlement of the proceeds of the above sale, also a true copy of the foregoing statement.

Cecil E. Doe Seller

Dollie Doe Seller

September 15, 1969.

ADJUSTMENTS TO BE MADE

(Read in conjunction with closing statement on pages 96, 97)

1. *Delinquent Taxes.* The abstract of title continued to date will show the status of the taxes for the preceding years. If they have not been paid, the broker should require the sellers to make such payments for preceding years and furnish receipts showing complete payments, and these receipts are to be delivered to the buyers. In case this cannot be accomplished, then the broker should charge the sellers with the taxes due,

and make payment of taxes as soon as the transaction has been completed, and this cost would be entered under costs advanced on behalf of sellers. This is generally considered better procedure than crediting the buyers and expecting them to make payment of taxes. Here, by instruction, buyers assume the tax obligation and receive a credit of $273.12 for last year's delinquent taxes and an additional credit of $17.29 for penalty and interest due to September 15th.

2. *Tax Adjustment for Current Year.* It is customary to prorate taxes for the current year on the basis of taxes for the preceding year, crediting the sellers' prorated share of taxes to the buyers. Entry should be made showing what current taxes are to be assumed by buyers, here amounting to 17/24ths of $273.12, or $193.46.

3. *Utility Charges.* Utility charges unpaid by sellers should be entered as a buyers' credit unless paid by broker and charged directly to sellers. Any prepaid water rents for irrigation waters or home use would be credited to sellers and debited to buyers.

4. *Insurance.* Any unearned premium for insurance on a policy that has been paid for by sellers and which is to be transferred to buyers should be prorated to settlement date, and debited to buyers. Here the buyers receive the unused portion of the policy amounting to 37/72nds (1 year and 6½ months) of $148.32, or $76.22. Any new policy written by the broker for additional insurance would be a debit to the buyers.

FINAL SETTLEMENT

The recommended procedure on settlement date is to have the buyers furnish a certified check for the amount due. This check should be made payable to the broker or jointly to the sellers and broker, requiring both signatures.

Total Amount Due From Buyers—would be the purchase price plus buyers' debits less buyers' credits.

Total Amount Due Sellers—would be the balance received from buyers less broker's commission and sellers' costs advanced.

FINAL SETTLEMENT WHEN A LOAN IS ASSUMED

The proposed real estate transaction in this section involves a new loan which the purchaser secures. Oftentimes and for various reasons the purchaser, with the consent of the sellers, may agree to assume and pay the existing loan. This agreement to assume and pay the existing loan should be written in the preliminary agreement to sell (Agreement to Sell and Purchase) and should also be written in the deed.

A statement prepared upon request by the lending institution holding the existing trust deed or mortgage will contain the

following information from which you, the broker, may prepare your closing statement. All of this information will be as of a certain date, the date being requested by the broker.

1. The loan balance and term.

2. The rate of interest and the amount of interest paid in advance or the amount of interest earned but not yet due.

3. The due date of the next payment or the amount of the delinquent payments.

4. The amount of the tax and insurance account escrowed for the benefit of the mortgagor.

5. The face amount of the existing insurance policy, the date of the policy, the term of the policy and premium of the policy.

FINAL STATEMENT FROM A LENDING INSTITUTION

The Lender's Loan Statement. The sample closing statement on page 96 indicates that all pay-outs are made by the broker. In practice this may not always be true. When a new loan is secured, the lending institution may make some of the pay-outs in order to protect itself. The lending institution in such a case will provide a *loan statement* showing the amount of the loan and the pay-outs it has made or will make. These pay-outs are deducted from the amount of the loan and a balance is shown which is called the loan proceeds. The check on the loan company can be drawn in this amount and made payable jointly to broker and purchaser.

The various charges that a lending institution will make to protect their interest vary from lender to lender. A loan statement from the Liberty Loan Company in the sample problem would probably appear as follows:

Loan Statement

Loan		$10,500.00
Pay-off on existing mortgage	$6,750.00	
Service Charge	105.00	
Title Examination by Loan Co. Attorney	20.00	
Recording Fees		
Warranty Deed	2.00	
Mortgage (first)	4.00	
Release or Satisfaction	2.00	
Abstracting after sale	30.00	
Taxes for preceding years with penalty and interest	290.41	
Total Charges		$ 7,203.41
LOAN PROCEEDS		$ 3,296.59

This statement in no way relieves the broker of his responsibility to prepare and provide a closing statement for his clients. The loan company has made these pay-outs by deducting them from the amount of the loan regardless of whether such pay-outs are chargeable to the buyers or chargeable to the sellers. The loan companies may also vary as to which of the costs they wish to pay. The broker must apply the loan proceeds against the balance due from the buyers and collect the difference.

OTHER COMMON CHARGES AND ADJUSTMENTS NOT MADE IN THE PREVIOUS EXAMPLE

It would be an impossibility to show a closing statement that would contain every type of charge in everyday practice. The proposed real estate transaction as described above is just a sample to acquaint you with a normal type deal. However, there are a few charges and adjustments, not shown above, that a broker should be thoroughly acquainted with because of their frequency in use at the present time. Some of such charges and adjustments are described below.

1. *Title Insurance Commitment and Policy.* In many areas, the use of a title insurance policy as evidence of good and marketable title is commonplace today. This is especially true among new dwellings and larger subdivisions where master abstracts cover entire subdivisions. As in the case of an abstract, this would be a charge to the seller and carried into the section listing seller's charges. If a title insurance commitment is issued, it is also chargeable against the seller; however, if the buyer should retain an attorney to examine the commitment because of the exceptions stated thereon, the attorney's fee is debited to the buyer.

2. *Tax-Insurance Trust Account.* Practically all lending institutions today require that a sum equal to one month's taxes and insurance be paid with each monthly installment. This is to be placed in the mortgagor's trust account to insure that moneys will be available for payment of taxes and insurance when due. In a transaction where the existing loan is being assumed and there is a tax-insurance trust account, this amount is debited to the buyer and the trust account thereafter used for the benefit of the buyer.

3. *Survey.* Occasionally the buyer and/or lending institution will ask for a survey to determine if there are any encroachments; also to determine if the improvements are in conformity to existing building codes and if sufficient space permits expansion of added bedroom, garage, patio, etc. The survey fee is debited to the buyer if it is to be paid through the broker.

4. *Appraisal.* When an appraisal fee is involved in closing a transaction, a rule-of-thumb calls for the fee to be chargeable to the party who benefits from it—normally the buyer. However, in many instances the seller will ask you to order an appraisal to determine a fair market value and/or to receive a firm loan commitment. If such is the case, the parties should determine who shall pay the appraisal fee and the broker should so state on the agreement to sell and purchase.

5. *Rentals.* Adjustment should be made on any rental if paid by a tenant in advance, and prorated share for rental period credited to buyer.

6. *Interest on Existing Loan.* When a sale is made subject to an existing loan which is to be assumed by the buyer, then any accrued interest on the loan from date of last payment should be credited to buyer.

Section XVII

Leases

INTRODUCTION

A lease is both a contract and a conveyance. It sets forth the terms of the agreement between the parties (landlord and tenant; lessor and lessee) whereby the right to possess and use the property for a certain period of time is transferred from one to the other. The interest in the property transferred may be nominal, as a lease for one month; or it may be substantial, as a 75 year lease. A lease for one year or less may be oral; a lease for longer than one year is required to be in writing. A written lease is always preferable because it furnishes objective proof of the terms agreed to by the parties.

A lease may be defined as an agreement between lessor and lessee whereby the lessee takes possession and receives the use and profits of an estate in real property for a certain period of time in return for which the lessor receives the lessee's performance and payment according to the conditions of the agreement.

LEASEHOLD TENANCIES

Leasehold estates can be classified into four types: (1) tenancy for years, (2) periodic tenancy, (3) tenancy at will, and (4) tenancy at sufferance.

1. *Tenancy for years.* A tenancy for years is one for a *fixed period* of time, whether for a day or 75 years. This type of tenancy ends on the last day of the term of the lease, without necessity of giving notice. A lease of this kind is by far the most common. In Montana, leases of city or town lots cannot exceed 75 years, and agricultural leases cannot exceed 10 years, but leases outside cities or towns not used for agriculture can be for any term. (See Sections 67-408 and 67-409, Revised Codes of Montana).

2. *Periodic tenancy.* Periodic tenancies are generally created by implication and not by an express provision. A periodic tenancy exists when the rental period is for a specified time, as week to week or month to month, but there is no definite termination date. The most common example is a residential lease whereby the landlord lets the premises to a tenant who pays rent monthly but there exists no definite agreement as to termination date. According to Montana law, and that of most states,

such tenancies require the giving of proper notice for their termination. Notice to terminate is discussed below under the heading of "termination of leases." (See Section 42-206, Revised Codes of Montana).

3. *Tenancy at will.* A tenancy at will is one that provides that either party may terminate the lease whenever he chooses to do so. Such a tenancy also exists when the agreement allows the tenant to occupy the premises until they are sold, or until the landlord is ready to construct a new building, or dependent, upon any other indefinite happening. Like a periodic tenancy, a tenancy at will requires the giving of proper notice for its termination. (See Section 67-523, Revised Codes of Montana).

4. *Tenancy at sufferance.* A tenancy at sufferance arises when a tenant in possession wrongfully remains after his lease has ended. Such a tenant is called a hold-over tenant. The landlord may treat the tenant as a trespasser and have him evicted, or may elect to accept him as a tenant for a similar term and under the conditions of the previous lease by accepting rent from him. The choice is up to the landlord; the tenant has none except that agricultural leases are renewed for another year if the tenant holds over for 60 days without demand of possession by the lessor.

The *tenancy for years,* being the type most often handled by real estate brokers, deserves further discussion. There are a variety of leases creating tenancies for years. Often they are classed as short-term or long-term leases. Such descriptions are, of course, relative. A three-year apartment lease may be considered long-term, yet a three-year commercial lease is comparatively short.

Long-term leases are growing in importance. Many of the newer buildings in metropolitan centers are built on long-term ground leases. A *ground lease* is a tenancy for years whereby a parcel of unimproved land is let for a relatively long period of time. This lease usually provides that a building shall be erected on the land by the tenant. Also, provision is made as to the disposition of the building at the end of the lease. The landowner usually becomes entitled to the building upon the payment of all, part or none of the value of building, depending upon their agreement. In absence of agreement, the building legally becomes real property and belongs to the landowner, who is not required to reimburse the tenant.

A long-term ground lease can be of considerable advantage to the tenant. When land values run as high as $1,000 and more per front foot, considerable capital would have to be invested in the land alone. If the cost of a building is added to this, the investment becomes tremendous and beyond the ability of many investors. But if the investor can obtain a long-term

ground lease, part of his financing problem is solved. Such a lease can be considered as the borrowing of the capital value of the land for the term of the lease. The ground rent paid the owner is, in this sense, the interest of the capital value of the land. The land itself, plus the improvements erected by the tenant, is the security for the "loan." A transaction with such ample security is indeed a good investment for the fee holder. Big businesses and investors have no hesitation in dealing with such long-term leases, provided the location involved is suitable to their purposes.

In addition, long-term leases involve a tax advantage. The rent paid by the tenant is a deductible business cost. If he purchases the ground, such cost is a capital investment and is not deductible; in fact, the ground is not even depreciable. To the landowner, the advantage is less income tax liability on the rent received over the years as compared to the larger capital gains tax if he sold the property to the tenant.

There is another advantage for the owner of valuable land who has insufficient finances to properly develop his holdings. Through a long-term ground lease he may acquire a tenant who will make the suitable improvements. To induce the tenant, the landowner may make concessions in terms of lower rent. With the correct improvements the fee holder's land will increase in value, said increment eventually returning to him at the end of the lease. Such leases often provide for the increases in value to be matched by increased ground rent at suitable intervals. This is what is known as a step-up lease. Two common ways to provide for these increases in rent are: (1) to provide for a fixed increase at stated intervals, or (2) to provide for the increase to be based upon the appraised value of the property, determined by an arbitration committee. Although, the first method has the advantage of being clear and definite, it is often said to be too inflexible to meet changing economic conditions over a long period of years. The second method—implemented by an arbitration committee usually composed of one member selected by the tenant, one by the landlord, and the third selected by agreement of these two—consists of applying a fixed capitalization rate to the appraised value of the property at regular intervals. This method is said to provide a currently reasonable rental, but can be difficult to implement when the committee members cannot agree. Some authorities on long-term leases claim that straight rentals for the entire period give the greatest satisfaction to both parties for they are then on a fixed program and can more easily plan their business to meet this program. Other authorities feel that such a fixed rental program is too inflexible and works a hardship on the tenant in a recessionary period or a hardship upon the owner in an inflationary period.

A tenancy for years may also be created by a percentage lease. Such leases are used for commercial establishments, gen-

erally retail stores, and usually provide for a fixed minimum rent plus a percentage of the tenant's gross sales. The National Association of Real Estate Boards periodically publishes a list of commonly accepted percentages charged for each type of retail establishment. Definition of gross sales or gross income should be clear and should provide for such things as returned merchandise, discounts for prompt payment made to customers, sales to employees, sales by mail, services rendered at cost (such as clothing alterations), income from vending machines, etc. Detailed provision should be made concerning the tenant's records and the landlord's right to examine or audit the tenant's books. Satisfactory use of percentage leases requires thorough knowledge and expert judgment.

A *sky lease* or lease of air space is another type of lease which usually creates a tenancy for years, generally for a long period of time. One of the first such leases to come into existence was executed in 1910, whereby the Cleveland Athletic Club leased the air space above a five-story building and erected thereupon eight additional stories. The club pays $15,000 a year rental for its space and also the improvement taxes, but not land taxes. The upper stories of this structure will revert back to the lessor at the end of the term upon the payment of its appraised value. The lease is based upon the common law right of the fee holder to use his land from the center of the earth to the dome of the skies, which today has been limited by the governmental right to regulate air traffic.

One of the most interesting utilizations of air space involves the Merchandise Mart in Chicago, which is said to be the largest building in the world. The building is constructed over the tracks of the Chicago and Northwestern Railroad, erected, on piers, 23 feet above the earth's surface, leaving space necessary for the operation of the railway.

Farm leases are based on the same principles as other leases. Usually the farm tenant pays a rental based on a crop sharing basis. The owner agrees to give possession of the land and improvements thereon, and perhaps to furnish the equipment, and the tenant agrees to furnish the seed, labor, equipment, to farm the land in a sound, reasonable manner and to pay a specified share of the crops. In some instances the rental may be a fixed sum. Ordinarily, each locality uses a form of lease that meets the various needs and conditions of the community.

Farm management has become one of the leading and most specialized branches of real estate. A farm manager must know soils, crops most suitable to the various types of soils, land conservation techniques, and the numerous other things necessary for successful modern farming.

ELEMENTS OF A LEASE

As stated earlier, a lease is both a contract and a conveyance. It is a contract in that it embodies the agreement of the parties; it is a conveyance in that the agreement involves the transfer of an interest in land, the right to possession and use for a period of time. As a ready reference, the list following contains the more common elements and considerations.

1. Date. Although not essential, a date can prevent controversy as to questions of time and related problems, such as the portion of a month or year's rent due.

2. Parties. It is essential that the parties have contractual ability and be named and clearly designated. If the property is owned by more than one person, all should be parties to the lease.

3. Consideration. The lease is not enforceable without consideration. The lessee's payment or promise to pay rent and the lessor's delivery or promise to deliver possession is the usual consideration supporting the lease.

4. Description of the property. It is essential that the lease describe the premises with reasonable certainty. If only a part of a building is rented such as the use of basement storage space, it should be specifically described.

5. Operative words. The lease should clearly state the extent and the nature of the interest being conveyed to the tenant, including the duration or term of the lease and the lessee's rights.

6. Conditions and exceptions. All conditions imposed on the lessee's tenancy and exceptions to the rights which normally accrue to a tenant should be set forth.

7. Lessor's and lessee's covenants. Any and all covenants to be fulfilled by either party should be included in the lease.

8. Signatures. A lease for longer than one year must be in writing and signed by the parties. However, the best evidence of the parties' mutual assent is the signed instrument regardless of the term.

9. Seal. A seal is not required, except generally in the case of corporations and governmental agencies.

10. Recording. A lease need not be recorded to be good. A long-term lease, as for 75 years, is usually extremely valuable and it is recommended that it be recorded. As a rule, the landlord does not furnish the tenant with an abstract of title or title insurance commitment, but in the case of valuable long-term leases, the tenant should require the owner to furnish evidence

of his clear title, at least before investing in valuable improvements.

11. Acknowledgment. A lease need not be acknowledged. However, in the case of a lease which will be recorded, acknowledgment of the signatures must be made.

12. Legal purpose. A lease of property for an immoral or illegal purpose is void.

TERMINATION OF LEASES

Leases can be terminated in four principal ways: (1) expiration of the term, (2) surrender and acceptance, (3) breach of conditions of the lease, and (4) eviction of the tenant.

1. *Expiration of the term of the lease.* A tenancy for a term certain ends on the last day of the term, with no notice to quit being required in Montana. If the contract is oral, the lessor should give the written statutory notice to quit because of the possible difficulty he may have in establishing the terms of the oral agreement.

To terminate periodic tenancies where the lessee remains in possession after the expiration of the term, and the lessor accepts rent from him (i.e., month after month), written notice to quit must be served by the party desiring to end the lease. Written notice to quit is required of the lessee as well as the lessor. (See Section 42-206, Revised Codes of Montana). A tenancy at will also requires written notice from the landlord to the tenant. According to Montana law, notice to quit must be in writing, describing the premises, stating the time the tenancy will terminate, signed by the party giving such notice or his agent, and served within a specified time before the end of the tenancy period. The notice to quit a periodic tenancy must be given at least as long before the expiration of the term as the term itself, but not exceeding one month. Notice to terminate a tenancy at will must be given not less than one month before the time specified in the notice, and a subsequent three day notice of right of re-entry must be given at the end of the period of the first notice. For nonpayment of rent, or for subletting or committing waste upon the premises contrary to the lease, three days' notice is sufficient. Said notice must be delivered to the tenant and upon any other person occupying such premises, or by leaving a copy with some other person of suitable age and mailing a copy to tenant's residence, or in case no one can be found, and tenant's residence cannot be ascertained, then by posting such notice in some conspicuous place on the premises and by mailing to the place where the property is situated. Sufficient notice of eviction involves technical procedure and should be prepared by a lawyer.

If the lease is for a definite term and the tenant does not actually surrender possession of the property at the end of the term, the landlord may elect to hold the tenant for a like term by accepting the next rent payment. (See Section 42-205, Revised Codes of Montana). Unless the landlord so indicates that he elects to retain the tenant, the tenant is a tenant at sufferance and is not entitled to notice to quit. Written leases usually require notice by the lessee within a specified time (i.e., 30 or 60 days) prior to expiration in order to exercise a renewal option.

2. *Surrender and acceptance.* A mutual agreement, either express or implied, between a landlord and tenant that the lease will be terminated without obligation on the part of either, is a termination by surrender of the lease and an acceptance thereof.

3. *Breach of conditions.* Failure by either lessor or lessee to perform agreed conditions or covenants constitutes a breach of the lease and may permit the injured party to cancel said lease.

4. *Eviction of the tenant.* An eviction may be either actual or constructive. An actual eviction occurs if the tenant is ousted from the premises, completely or partly, either by an act of the landlord or by someone with superior title. Constructive eviction occurs when the leased premises have been permitted to become in such physical condition, owing to some act or omission of the landlord, that the tenant is unable to use the premises for the purpose intended. Failure to furnish heat or other facilities contemplated by the lease or any other deprivation of use by the lessor is also a constructive eviction. The tenant cannot claim constructive eviction unless he removes himself from the premises.

5. *Termination under other conditions.* If leased property is taken for public use by condemnation, the lease is terminated. The tenant is entitled to compensation for the value of the unexpired portion of the lease, and his claim is paramount to that of the landlord.

The foreclosure of a mortgage or other lien may terminate the lease. If the mortgage or other lien was prior in time and the tenant had either actual notice or record notice of the lien, then foreclosure of said claim will terminate the lease.

Destruction of the leased property also terminates the lease.

DUTIES AND LIABILITIES OF THE PARTIES

A carefully drafted lease will clearly set forth all the duties and responsibilities of the lessor and lessee, thus avoiding ambiguities that might lead to controversy. In absence of a com-

plete setting forth of all terms, the law presumes certain agreements on the part of the parties. For instance, unless there is an agreement as to payment of rent in advance, the law presumes that the rent is not due until the end of the rental periods.

The tenant may use the premises in any lawful way whatsoever and for which they are appropriate, unless the lease expressly restricts such use. If the premises are unsuitable for the specified purpose of the lease, the landlord, unless he agreed to do so, need not remodel the property but the tenant may do so. However, in Montana, if the lessor refuses to repair dilapidations of a dwelling house after notice, the tenant may repair and deduct the cost from the rent if cost does not exceed one month's rent. The landlord may compete or lease to a competing business within the same building unless the lease so prohibits.

A lease of business property implies that the tenant shall have the right to advertise his business by maintaining signs on the leased property. A tenant may remove fixtures if he can do so without injury to the premises.

The lessor has no right as such to enter upon the leased premises. The landlord's right to enter upon the premises to inspect the property or to show it to prospective purchasers or lessees should be provided for in the agreement.

As a general rule, the person occupying the property is liable to others for injury caused them by the condition of the property. The occupant is also liable to others for any nuisance resulting from the occupant's use which interferes with their use and enjoyment of their property.

The landlord is generally not liable for injury to the tenant or his family caused by the property's condition, unless such condition is not apparent and the landlord had knowledge of such dangerous condition. The landlord may be held liable to persons using the sidewalk or highway abutting on the property for injury caused by dangerous conditions existing on the property.

Regardless of the technical legal rights and liabilities of the parties, experience has demonstrated that in any suit for personal injuries, it is unlikely that a jury will give a landlord sympathetic consideration. Even a successful defense of such litigation is costly. The prudent property owner should protect himself by taking out adequate liability insurance which provides coverage against liability for accidents resulting in bodily injuries or death arising out of ownership or any occupation or use of the premises.

As a general rule in many states, partial or total destruction of the premises by fire or other accident does not relieve the tenant from his obligation to pay rent. Some states, including Montana, feel this common law rule is harsh and have enacted statutes stating that in the case of destruction or damage mak-

ing the property unfit for occupancy, the lease is terminated and the tenant is relieved from paying rent. (See Section 42-109, Revised Codes of Montana). It is usual, and strongly recommended, that the lease provisions cover such emergencies.

Unless the provisions of the lease prohibit, the tenant may assign or sublet the premises to another. Although the lessee sublets the property, he remains liable to the lessor for the performance of all the conditions of the lease. It is usual for the lease to provide that the property will not be sublet or assigned without the lessor's consent.

The above discussion should indicate the extreme desirability of having a carefully drafted lease, clearly setting forth all the conditions and covenants of the tenancy and all the duties and responsibilities of each party.

Section XVIII

Property Management

HISTORY AND DEVELOPMENT

Property management, one of the growing specialties in today's real estate business, is one of the few recent innovations in a business that generally can trace most of its functions and ideas hundreds of years ago. Today this field has its own special professional society, The Institute of Property Management of the National Association of Real Estate Boards, whose function is to improve the operation and ethical standards of those qualified as members. For those interested in a profession in property management, the Institute of Real Estate Management grants the title of Certified Property Manager (CPM) upon those who engage in the field.

The rapid growth of the urban areas of our country beginning at the turn of the century, coupled with the large holdings of family housing by financial institutions during and immediately after the depression precipitated the need for those trained in property management. Although most property managers are located in the larger urban area where real estate is predominantly multistoried office buildings, the average broker may find himself occasionally forced into property management. Situations that could cause this would be a rapid down trend in realty sales, or absentee-owners requesting brokers to rent their property. This is not a field which is exclusively for those professionally trained; the real estate broker at large may participate to some extent, thus a reasonable knowledge and understanding is appropriate for all brokers. The knowledge that a property manager must have, whether he be full-time or part-time, is gained in the general operation of a real estate broker's business with special additional knowledge necessary in business administration, merchandising, purchasing, accounting, advertising, insurance, repairs and maintenance, taxation and public relations. A property manager is a veritable jack-of-all trades.

The types of property that can be managed, depending on the manager's qualifications and training include: office buildings; store buildings; apartment houses; single-family residences; public housing; lofts; factories; garages; hotels; shopping centers; single-purpose buildings, such as theaters, restaurants, churches, hospitals, mortuaries, service stations, public buildings, and any other properties in which people live, work or play.

TYPES OF PROPERTY MANAGER

There are three types of property managers: the general property manager, the individual building manager, and the building superintendent or resident manager, who represents the agency rather than the owner and who is employed on a salary and devotes his entire time to the management of a single building.

1. The general property manager is a member of a real estate office or agency, which manages a number of properties for various owners. He may be a member of the firm and devote his time exclusively to management; he may be in the business for himself as a managing agent; or he may be one of a number of managers in the management department of a large real estate organization which has many clients and a good many properties under its care. In the latter case, especially in large cities, he may specialize in the type of building he handles, such as office buildings, loft buildings, apartment buildings, or he may combine two types, such as apartment buildings and outlying store structures, or office and store buildings in business districts.

2. An individual building manager may be employed by a property manager or directly by the owner and usually manages a single large property, generally a skyscraper. He is almost universally hired on a straight salary basis.

3. The resident manager is employed by a real estate agency or a managing agent to manage an apartment building property and lives on the property. He is usually in large buildings of small apartments where the change in tenancy is frequent. He has qualified for such work through previous training or managing an apartment building. In suburban districts of cities and in small communities, competent janitors have sometimes become resident managers, but the tendency in valuable properties is to replace them with resident managers of special training and experience.

4. A building superintendent is employed by an agency to supervise an office building and is the representative on the premises. He is concerned chiefly with maintenance and operation. He hires and supervises the work of janitors, elevator operators, maintenance men, and scrubwomen. Competent building superintendents sometimes become individual building managers.

DUTIES AND RESPONSIBILITIES OF THE PROPERTY MANAGER

The primary duty of any property manager is to obtain the highest possible income from the property for the owner. Of

equal importance is to maintain a good working relationship with the tenants, because without the former the latter is impossible.

Other specific functions are:

(1) Establish the rental schedule.

(2) Merchandise the space and collect the rents.

(3) Create and supervise maintenance schedules and repairs.

(4) Supervise all purchasing.

(5) Develop a tenant relations policy.

(6) Develop employee policies and supervise their operations.

(7) Maintain proper records and make regular reports to the owner.

ESTABLISHMENT OF PROPERTY MANAGERS AUTHORITY

As is true in all business enterprises, especially one involving the creation of an agency relationship (see section on Agency) which exists between property owner and manager, a written contract containing all essential terms must exist. These terms should include the period the authority to rent or lease exists; policy relating to the management of the property; fees to be charged for management; and any other authority needed for the normal operation of the property. This type of a contract can be obtained from an attorney, or forms are available. It is important to note that a property manager is an agent, and governed by all legal restrictions imposed thereby.

Section XIX

Property Insurance

THE FUNCTION OF INSURANCE

Risk is an ever-present phenomenon in property ownership as in virtually every human pursuit. Almost all loss to property should be anticipated and this risk shared with others via the modern insurance mechanism. The frequency and severity of these attacks upon property values can be substantially reduced as insurance companies and their servicing organizations share information as to causation of sources of loss. The important contribution insurance makes in our modern society is the reduction of uncertainty in the minds of those who dwell under its blanket of protection.

1. Definition

Insurance is defined in various ways depending upon how one views its operations. The legal mind will think of it as a contract setting out the manner in which risk of loss is determined. Social scientists look upon insurance as a social device by which risk and uncertainty are lessened. The business community looks upon insurance as an institution for the joint shouldering of risks, as a basis for credit and a mechanism for the saving and investment of funds. Any attempt at a brief definition is likely to fail to satisfy any of these interests. It does appear that any definition of insurance must contain the following ideas: (1) the existence of a legally binding contract, (2) the transferring of the risk of loss from one to many, and (3) the existence of a mechanism for accumulating funds.

2. Insurance Basics

Insurance is a contract and as such it comes under the law of contract demanding all of the prerequisites of (1) competent parties, (2) offer, (3) acceptance, (4) consideration, and (5) a legal purpose. In addition, time and circumstances have dictated that this is a special kind of contract with special additional elements. In the interest of space these specialties can be only named here (except for the last two) in the hope that the reader will recognize their implications to wit: The insurance contract is said to be (1) aleatory, (2) conditional, (3) executory, (4) personal, (5) one of adhesion, (6) one of indemnity, and (7) insurable interest.

a. Indemnity

Indemnity refers to the *amount* the policy owner may collect.

There is a "valued policy" law in a few states which says that the assured collects the face of the fire insurance contract in event of a total loss—in short, the face of the policy *is* the value under this doctrine. Property insurance purports to reimburse the assured up to the dollar value of the actual amount of loss sustained.

b. Insurable Interest

Insurable interest measures the degree to which a loss can be sustained. It bespeaks ownership or economic impairment of values arising out of a bundle of rights one has with regard to specific values. It can be dogmatically reiterated that without insurable interest the insurance contract becomes a gambling devise. The law has helped clarify the issue somewhat by demanding that the insurable interest in life insurance must exist at the time the policy is granted by the company, but under a physical damage policy the insurable interest must exist *at the time of the loss* before collection can be made under the contract. Insurable interest dictates one cannot collect for loss to property in which he has no financial interest.

c. Assignment

It has been previously stated that the insurance contract is a personal contract. It is true that it follows the person rather than the property. Nonetheless, if one purchases an insurance contract and sells the property, he may subsequently arrange for transfer of the insurance to the new owner.

d. Subrogation

An established doctrine of the common law dictates that he who causes a loss ought also ultimately be made to bear the responsibilities for the value of the damages sustained. At first blush it may appear patently unfair that Jones sustain a loss to his auto via the negligence of Smith and in being paid for his damage by his insurance company Jones assigns his rights for the damage sustained. To fail in this would violate the *doctrine of indemnity*; i.e., Jones could otherwise collect his collision damage from his insurance company and from Smith as well. The right of the insurance companies to subrogation is a necessity but it applies only to the dollar amount of damages for which they have paid, and gives to the insurer only such rights as the insured possesses against the responsible party. Because one agrees to keep his property insured for a specific percent of its value for which the rate per hundred dollars of value is reduced, the critical demand upon him is to determine the value of the property and carry the accordingly required amount of coverage.

e. Deductible Clauses

A repetitious history of small claims has to be paid for finally by the insured. If a neon sign has a long history of $10.00 losses per year, any company which does not *begin* with a $10.00 premium just does not know the facts of insurance life. So losses which are repeatedly sure to happen, particularly small losses, will simply repose finally on those who own the property. The costs of providing the coverage and administration of the claims would simply be added to the costs of the property owner. Thus, the device of the deductible at least for small, repetitious claims augers to the best interest of all. Deductibles also make sense because they serve to make possible protection for more serious damage with substantial cost reduction. The deductible clause still retains its original purpose of encouraging the assured to maintain his property. Contrary to those who have not given the subject much thought, the deductible is *not* a cheap device by insurance companies to avoid the payment of claims.

f. Pro Rata Distribution

The pro rata distribution clause means that as a result of the verbage in this clause the total coverage under a blanket policy applies specifically at a given location in the proportion that the values at that location bear to the total values at all locations. If one had $100,000 blanket insurance on ten buildings and one building burned, without the pro rata distribution clause attached to a policy, the total amount of insurance could be applied to that destroyed building if the values warranted it. But if the same condition exists with a pro rata distribution clause attached with $100,000 blanket insurance then the proportion of the total insurance applicable to the destroyed location would be in the value that the destroyed building had borne to all of the insured buildings.

g. Extended Coverage Endorsement

Many readers will recall the time when only fire, lightning, wind, and hail protection was available to the rank and file of insured values. With the complexity of our culture other perils have arisen and, characteristically, insurance companies have revamped contracts to provide the protection required. Thus the simple expediency was struck upon of taking a basic fire and lightning contract and adding to it a "rider" which included windstorm, cyclone, tornado and hail coverage, and additional elements of destruction to wit: smoke damage, explosion, riot, civil commotion, falling aircraft and vehicle damage. If one runs down that list it is noticeable that while fire may well have been due to the acts of man, lightning, windstorm, and hail were quite beyond his power to induce loss. On the other hand, the additional source of losses: smoke damage, riot, vehicle

damage, etc., grew out of a twentieth century industrialized environment. In many jurisdictions some elements of this coverage carry a deductible—notably hail and windstorm losses. Most other sources of loss are not subject to a deductible.

3. Risks to Contemplate

a. Fire Insurance

The standard fire policy form without the extended coverage endorsement covers ". . . direct loss by fire and lightning . . ." yet the contract makes no attempt to define "fire." This is left to the discretion of the courts of the several states. The word "direct" is imperative as it demands there be a fire as the proximate cause of the loss. The classic example of the auto wrecked by a fire truck answering a call dictates that the auto damage is not a direct loss of the fire.

It is to the point to recognize that damage to property as a result of removal when fire threatens is covered under the standard fire policy. This is felt to be a direct loss by fire and the owners are only trying to protect their property which is in the public interest. In fact, the assured is obligated to do anything reasonable to save threatened property. Scratching, marring, breakage, spillage, etc., are all compensable when arising out of this effort to protect the property.

The standard fire form contains verbage to protect the mortgagee's interest in the insured property. For practical purposes, however, there has been perfected a standard mortgage clause in every state which names the mortgagee and redefines his rights. The legal implications of this standard mortgage clause is that it has the effect of creating a separate agreement between the mortgagee and the assured, very much as though the assured had taken out a separate policy to protect his interest.

While different policies have different procedures in event of loss to the insured property, in general it can be said that a prime rule is for the assured to protect the salvage as a primary act. Other generalized rules call for separating the damaged and undamaged property, listing the damaged goods with detail as to original cost, age, and present value. It goes without saying that the company must be notified of the loss "as soon as possible," "immediately," or similar exhortation depending upon the type of policy owned. A good rule of thumb is to notify the agent of the loss and damage as soon as one can reasonably do so. A last act to fulfill most policy terms is to file a proof of loss within a certain period of time after the loss.

b. Other Hazards

i. Consequential Loss

The typical policy on real property calls for the insurance company to reimburse the assured for *direct* loss. A fire or other catastrophe sets in motion a chain of circumstances which

may cost the assured money—loss of business, loss of profits, loss of personnel, as a result of lack of need during a rebuilding period, etc. It is to the point to recognize that these losses are typically not covered unless specifically insured under the general heading of "time-element coverages." There are forms which attach to basic fire contracts which specifically intend to cover these indirect losses, consequential to an insured hazard. Without trying in any way to be specific about these coverages it can be generalized that the intent of available policy forms is to defend a business as much against loss of its profits, its continuance of payroll, and other ongoing expenses, as it is to pay for the rebuilding of its factory or store. This same indirect loss concept applied to the homeowner provides protection for his necessary living expenses over and above usual living expenses while the insured dwelling is untenable. For those who own commercial or dwelling property as a source of income there is also the rental value policy which is available to permit continuance of that rental income during the rebuilding period after a catastrophe.

ii. Windstorm

There is a technical difference between windstorm, cyclone and tornado. The insurance company makes no such distinction and invariably adds hail coverage as an addition within the extended coverage endorsement. In many jurisdictions this coverage demands automatic attachment of a deductible amount—$50 or $100 in the event of a loss. Purpose here is to keep the cost of claims in manageable proportions.

iii. Riot and Civil Commotion

The extended coverage endorsement and the so-called all risk policies include protection for damages originating from such actions. Riot is closely defined in the statutes but not in the basic contracts, usually calling for three or more persons intending to do bodily harm. Typically civil commotion is defined in either instance. The recent rash of destruction of properties in ghetto areas, perhaps as a by-product of the civil rights movement, has raised the question of whether these damages are contemplated in the above named perils. A number of officials have carefully avoided the use of the word *insurrection* which origin would be excluded under most physical damage policies. At present the damages which grow out of unrest in the cities whether in ghettos, industrial plants or on college campuses are being paid for under existing insuring agreements.

iv. Rain Insurance

The basic intent of rain insurance is to reimburse for losses sustained when scheduled events must be cancelled because of

the incidence of rainfall during a critical period before or during the event. It can also be written as a reimbursement for partial losses arising out of restricted ticket sales while contractual costs remain. Coverage is usually provided on specific application to the companies who engage in this type of underwriting.

v. Rents and Rental Values Insurance

We have previously mentioned those sources of damage and loss which are "indirect." To lose the rental income because properties are uninhabitable from damages sustained is a genuine source of loss. Estate beneficiaries, trustees, administrators all recognize the need to protect against loss of income because the buildings owned are too badly damaged for further occupancy. Similarly, retired persons or restricted income persons depend upon rents of owned property to build equity for its owner. A little reflection quickly establishes the legitimacy of this coverage provided by the companies as rents dwindle or cease when income property is no longer able to generate this income because of loss and damage from a hostile environment. Rates are related to the physical damage fire rate for the property and also the extended coverage rate applicable to the property.

vi. Leasehold Interest

Leases originally are written to contain a cancellation clause providing that either party to the lease may terminate the lease at his option if the leased property is damaged to a certain percentage of its value. Often these leases are written for a long term and the rental value of the property may be disproportionate to the amount of the annual payments called for in the lease. The lease income may be too low in the light of current experience in which instance the lessee would care to be protected against having the lease broken—if the income called for in the lease is disproportionately high and not in keeping with current lease income for like properties, the lessor has a genuine value that can be lost if leased property is destroyed to the extent that the lease can be broken.

A second element to be considered within this general heading is the matter of the betterment and improvements put into a property by a lessee and by the terms of the lease these become the property of the lessor in that they cannot be subsequently removed. It is easily perceived that at the beginning of the installation the improvements belong totally to the lessee and at the end of the lease entirely to the lessor. Over the years title and value gradually move from one to the other. Failure of either party to consider these values can subject the owner to a substantial loss. Incidentally, failure to recognize these values as a part of the improvements can also significantly cause the true owner, as per terms of the lease, to be substan-

tially over or under insured. In the event of the existence of coinsurance this can lead to an undesirable experience if loss occurs.

vii. Glass Insurance

Glass insurance is one of our most easily understood coverages. Here again the emergency service is often a prime cause for carrying the protection. Policies almost invariably call for temporary repairs, and replacement of the glass. Modern glass policies call for full insurance to value and are all risk including damage by acids or chemicals, damaged frames and bars, removal of obstructions and temporary installations as indicated. Exclusions are three: fire, war—including invasion, civil war, insurrection, revolution, rebellion, and origins from nuclear energy. The so-called "sonic booms" claims have been honored almost from inception of this phenomenon.

c. Liability Insurance

i. Owner's, Landlord's and Tenant's Liability Policy

A man's home is said to be his castle, but a quick review of court calendars will provide ample evidence that it can also be his jail cell. Injuries sustained as a result of one's ownership, maintenance, and usage subject one to claims of all imaginable variety. As the name implies, OLT coverage is made to cover the interest one has by virtue of being at least one of the above involved—owner, landlord, or tenant. The policy provides the defense, the payment of claims up to the limit, interest on the judgment rendered, and with few exceptions against anyone who might initiate suit. Injury to one's own employees are excepted as are damages brought about by one's automobile in order to avoid duplication of coverage and two premiums. Modern policies cover *occurrences* and not just *accidents* in order that ongoing exposures to recurring sources of damage may be compensable. Damage to the property of others is also included as those who slip and fall in one's premises often resulting in damage to clothing and other personal items.

ii. Manufacturer's and Contractor's Policy

The manufacturer and contractor is intended to provide coverage for liability from bodily injury and property damage where operations take the operator away from his home premises. It provides essentially the same coverage away from the premises as the OLT policy provides *at* the premises.

iii. Owner's and Contractor's Protective Liability Policy

Property under construction, maintenance or repair stagger the imagination of those who ponder the propensity for misfortune to injured workmen, sightseers, the public in general, whether it be their person or their property. Elaborate contracts drawn in advance of actual construction will find owners

asking prime contractors to file liability policies to protect the contractor against claims from these unfortunate, unforeseen, and sometimes almost unknowable sources of loss. Prime contractors will ask the same protection of sub-contractors and sub-contractors will seek the same filings from their underling contractors. It would appear that there can be no slip-ups—but still it happens. Thus there arises the necessity for contingent liability policies which admittedly are primarily defense contracts so that even with all the above defenses the owner or the prime contractor cannot be held liable to the detriment of his financial well being. The only way for the owner to avoid falling prey to such mismatch between exposure and coverage is to provide the contingent coverage to "fill in the chinks."

iv. Comprehensive General Liability Coverage

This contract is intended to provide, in a single policy, protection against all the liability perils to which one may be subjected. Instead of a series of policies covering the premises, operations, elevators, and other individualized functions, this policy attends these items plus the unknown and unknowable exposures which may come to pass during the year but cannot be foreseen at the beginning of the year. The policy is for protection for damages to persons and property on an accident or occurrence basis and includes one's professional mal-practice exposures, and contractual liability. Exclusions are minimal and often noted only to avoid duplications of coverage and premium. The premium is established at policy inception by applying manual rates to known exposures, and to this is added a charge made for those exposures unforeseen for the upcoming year.

4. Title Insurance

Title insurance refers to real property in which the contract looks backward and the underwriting company agrees to hold a policyholder harmless for losses growing out of an undiscovered defect in the title of the insured property. The contracts are not uniform in their provisions but insuring clauses in the policy provide indemnity to an insured, heirs and devisees to some limit for (1) any defects in the title of the described property, (2) lack of marketability for defects in the title of the described property, (3) and the existence of liens, encumbrances, or estate interest to the described property. Usually any such liens, encumbrances, or easements are noted in the title as defects and specifically exclude liability for such elements. The alternative to title insurance is an abstract of title with a written opinion from a reputable title attorney as to title validity.

5. Mortgage Insurance

Mortgage insurance means different things to different people, but any of these references have relevance to the field of real estate: (a) To the life insurance man mortgage insurance means a policy roughly equivalent to the unpaid balance on a property, the basic intent of the policy probably is to transfer to the wife or other heirs the property free of encumbrance in the event of an untimely demise. It is widely used and takes a number of forms but is most easily visualized as a decreasing term coverage. Mortgagors and mortgagees are increased in their security by reason of this coverage becoming widely available. (b) Alternatively, mortgage insurance is provided by Federal Housing Administration, the Veterans Administration and from time to time other instrumentalities of the federal government to provide security to primary mortgagors by assuring the payment of unpaid mortgage balances on qualified real estate loans. Popular rates have been one-half of one percent on unpaid mortgage balances. The program originated as an outgrowth of emergency legislation during the Great Depression and has grown in dollar amount and economic effect as the problem of adequate housing has increasingly gained recognition as a social issue of this nation. Specific rules and regulations are a difficult area in which to generalize as to these governmental mortgage insurance functions for they change in accordance with need. Generally, it can be said that the Federal Housing Administration sets a top figure on their liability for any one insured property and currently asks that the mortgage lender stand the first 20 percent of the loss sustained. (3) In the private sector there exists the Mortgage Guarantee Insurance Corporation and several more recent similar organizations which insure the unpaid balances of real estate mortgage lenders. Currently their rates are less than the governmental organizations in some jurisdictions. The private sector mortgage guarantors also pay all of the first 20 percent of the loan to the lender and lets the lending company participate in the excess on a 4/5 basis to the MGIC and 1/5 to the lender over the first 20 percent. Again, these conditions change from time to time and place to place; however, it can be safely generalized that there is mortgage insurance in both the public and the private sector currently available.

Section XX

Appraising

GENERAL

The valuation or appraisal of real estate is utilized in all phases of the real estate business and in practically all real estate transactions. It is necessary that a real estate broker or salesman have knowledge of the functions of an appraisal, the elements of an appraisal, and the utilization of an appraisal to better serve his client and meet his obligation to the general public. The salesman or broker need not qualify as an expert appraiser but must be qualified to render an estimate of value or a probable sales price of a property which he proposes to list. The salesman or broker must be familiar with the concepts of value, the forces which influence value and the methods by which value may be estimated. It is the duty of each broker and salesman to familiarize himself with the principles of appraising to utilize his skills in the real estate business.

Almost without exception, a value estimate or an appraisal is involved in each real estate transaction. In most instances, the salesman must make a value estimate for listing purposes. A mortgage lender in turn makes an appraisal for mortgage purposes. Quite often a prospective purchaser requests a professional appraiser to make a thorough appraisal or study of the highest and best use of a property.

An appraisal is no more than a written, supportable opinion of value, rendered by a professional appraiser who is experienced in the elements of value and the methods of value determination.

The professional appraiser is obligated to render a supportable, unbiased opinion of value based upon actual conditions, not upon remote or speculative uses.

HISTORY OF APPRAISING

The history of business shows that appraisal concepts were first devised in ancient times. Further records indicate the limited use of appraising as early as the 18th Century. The appraisal has been utilized in America in conjunction with the power of eminent domain of our governments for many years. The depression of the 1930's brought to the attention of banks and lending institutions the necessity of a thorough study of the elements of value.

Appraisal organizations with the function of education of qualified appraisers and standardization of appraisal practices

have been formed by interested trade organizations and lending institutions. The American Institute of Real Estate Appraisers and the Society of Residential Appraisers were organized in 1935 to carry out these functions. These organizations have grown to a nationwide scale with qualified members in every state and are responsible for the continuing educational facilities and seminar programs throughout the country. Periodically, advanced appraisal courses are offered in selected universities and are staffed by the experienced men of these organizations.

In recent years the American Society of Appraisers and the American Right-of-Way Association have been chartered to supplement the previous organizations and pursue particular problems of appraising. Designation of one or more of the above recognized organizations is the appraiser's only form of qualification as licenses or certificates are not required in Montana.

APPRAISING AS A PROFESSION

Specialists in the valuation of real estate are found in all portions of the state. These individuals generally have specialized training and extensive experience in the principles of appraising and the valuation of real property. Real estate brokerage offices, savings and loan organizations, banks, lending institutions, leasing firms, city, state and federal government, and large real estate owners or developers often have real estate appraisers in their employ. In addition, independent fee appraisers perform the valuation function and assist the organizations listed above as well as the general public.

USES OF AN APPRAISAL

An appraisal may be desired for many purposes, such as to determine:

Market value for prospective buyer or seller.

Loan value for mortgage lending purposes.

Market value for condemnation in eminent domain proceedings.

Market value for income tax or inheritance tax reasons.

Highest and best use of property.

Value for proposed remodeling or rehabilitation.

Value of improvements for fire insurance purposes.

Value of an interest in property such as lessee's or lessor's interest. (Value of a lease).

Value for real estate tax assessment purposes. (Ad valorem).

DEFINITION OF MARKET VALUE

The value most commonly requested by brokers and appraisers is market value or the probable sale price of the property if it were offered in the open market. Market value has been defined by the courts as follows:

The price estimated in terms of money which a property will bring if exposed for sale on the open market allowing a reasonable time to find a willing and able purchaser who buys with a full knowledge of all the uses to which it is adapted and for which it is capable of being used, and in which transaction both the buyer and seller are informed and neither is acting under compulsion.

THE PRINCIPLES OF REAL ESTATE VALUE

The value of all commodities is based upon economic principles. A knowledge of these principles or axioms assists in the understanding of real estate valuation when applied by the appraiser. These principles are briefly explained as follows:

Principle of Supply and Demand—Value of any commodity is created by both demand and scarcity. As an example, there is a scarcity of four-leaf clovers, but there is no demand for them. Inversely, there is a demand for the air we breathe, but there is no scarcity of this item. In its application to real estate value, we realize the scarcity and demand for land in our dense downtown districts and we realize neither scarcity nor demand for our desert lands. The greater the scarcity and desire of land for a specific purpose, the greater is the value of that land.

Principle of Change—The principle of change is universal in its application. Nothing in our world is unaffected by change. All matter is in a constant state of flux and change. The rise and fall of civilizations through evolution and revolution is a matter of history. This concept applies to real estate as we are unable to find a "static" neighborhood, as the frequent changes in the attitude of the market are continually effecting the value of property.

Principle of Substitution—In this principle it is found that less costly services or products compete with similar more expensive services or products when their utility is the same. If two or more commodities or services with the same utility are available, the lower priced one will receive the greater acceptance. In our real estate market a prospective tenant will select a property with the lower rental, if two or more properties have the same utility and location advantage.

Principle of Highest and Best Use—This concept of value deals with the highest and best use of a property, that is, the use which will return the greatest net income for a reasonable

period of time. This principle is sometimes seen in practical application in the demolition of a single-family residence for the construction of an apartment house. In this instance, a greater net income can be earned by the land in the apartment house use.

Principle of Balance—The principle of balance is a natural law. It is reflected in nature by the interdependence of plant and animal life. It is carried forward in the real estate market through the balance of residential development, industrial development, and business development within a community or an area. The development of all real estate requires the balanced effort of labor, management, capital and land. Maximum value is achieved when these agents of production are in proportionate balance with one another.

Principle of Competition—This principle stems from the fact that profit tends to breed competition and excess profit tends to breed ruinous competition. In its application to real estate, the construction of several shopping centers in the same neighborhood will very likely result in the destruction of the economic value of one or more of the competing facilities.

Principle of Conformity—This principle holds that maximum value is realized through a reasonable degree of homogeneity. Residential properties in industrial neighborhoods diminish in value because of their nonconformance, as do industrial properties in residential neighborhoods. Zoning regulations attempt to prevent inharmonious uses.

APPROACHES TO VALUE

The appraiser employs three distinct avenues of approach in the valuation of a property. Each of these approaches is independent and applies the principles of value. In the appraisal process, the appraiser makes a thorough investigation of the property, the neighborhood, and the community. This investigation is further extended to the sales market, rental market, mortgage market and the investment market of similar properties. Upon completion of the investigation, one or more of the three basic approaches are then employed.

Cost Approach—This approach is frequently called the Depreciated Replacement Cost Approach. It deals with the replacement or reproduction cost of the improvements, based upon current construction cost estimates, regardless of the age of the property. From this sum is deducted depreciation which takes three forms: Physical Depreciation, Functional Obsolescence and Economic Obsolescence.

Physical Depreciation is the measure of normal wear and tear, disintegration or wearing out of the physical improve-

ments. It can be determined through a separate analysis of the future physical life of individual items of construction in the building.

Functional Obsolescence deals with the diminution in value of the improvements based upon their loss of utility or general acceptance in the market. This form of obsolescence deals primarily with the nature and construction of the improvements, their location upon the site, and conformity to similar structures. A once acceptable but now undesirable residential floor plan would be an example of Functional Obsolescence.

Economic Obsolescence is concerned with the neighborhood influences as they effect the improvements. This obsolescence deals with the theory of neighborhood conformity. A residence, located immediately adjacent to a service station which was constructed after the house, would normally suffer from Economic Obsolescence.

The total of these three forms of depreciation is deducted from the replacement cost of the improvements, the resulting sum being the depreciated replacement cost of the buildings. To this sum is added the value of the land as though vacant and unimproved. This valuation is determined by a comparison of similar land sales in the neighborhood or comparable neighborhoods. The total of these sums is the Depreciated Replacement Cost of the property.

This approach is most effective in newer properties because of the availability of accurate current construction costs. An example of the procedure and format of this approach to value applied to a single-family residence is shown as follows:

Residence—950 sq. ft. @ $11.20/sq. ft.		$10,640
Attached garage—260 sq. ft. @ $3.75/sq. ft.		975
Replacement Cost of Improvements (New)		$11,615
Less Depreciation		
Physical—from observed condition—8%	$930	
Functional Obsolescence—Incurable poor floor plan (judgment)	500	
Economic Obsolescence—Incurable across street from school (judgment)	750	
Total Depreciation		2,180
Depreciated Replacement Cost Improvements		9,435
Plus Value of land (by comparison)		2,550
Depreciated Replacement Cost Approach		$12,985

Income Approach—This approach is sometimes referred to as the Capitalization Approach. The approach deals with the determination of gross income based upon the income of the

subject property or of similar properties. From this income deductions are made for normal, recurring expenses which vary in nature depending upon the type of property. The basic fixed expenses present in most income-producing properties are: real estate taxes, insurance, water rent, maintenance, heat and/or electricity, caretaker, and management charges. Further non-recurring expenses should be deducted through reserve accounts for items such as redecoration, replacement of roof, replacement of carpets, etc. These expenses are best estimated through the analysis of the records of the property or of similar properties. A further deduction should be made for normal vacancy and rental loss allowances.

Gross Income—12 units @ $100 mo. x 12 mo.			$14,400
Less Vacancy and Rental Collection Loss—5%			720
Effective Gross Income			$13,680
Less Expenses:			
Real Estate taxes (from assessor)		$1,950	
Insurance (rate book)		150	
Water (from comparison bills)		125	
Maintenance (experience)		200	
Heating gas and electricity (comparison)		800	
Caretaker (comparison)		480	
Reserve for replacements (future life of replaceable items)		400	
Reserve for redecoration (4 units each year)		450	
Management—6% effective gross		820	
Total Expenses			$ 5,375
Net income earned by property			$ 8,305
Less Interest on land (income earned by land) 6.5% of $16,000			$ 1,040
Net Income Earned by Buildings			$ 7,265
Capitalization:			
Risk—Interest Rate	6.5%		
Recapture Investment (50 yrs.)	2.0%		
Total Capitalization Rate	8.5%		
Value of Building	$7,265 / .085 =		$85,470
Plus Value of Land		16,000	
Value Through Income Approach		$101,470	

The deduction of the above recurring and nonrecurring expenses from the gross income produces a net income earned by the land and improvements. The income earned by the land is then deducted from this net income to produce the net income earned by the improvements. This sum is then capitalized at a capitalization rate or risk-interest rate which is comparable to other real estate investments and other types of investments. Justification of this capitalization rate can best be found through the detailed analysis of similar investments that have sold in the market. A recapture rate is added to the risk-interest rate to determine the total capitalization rate. This recapture rate is expressed in percentages and is based upon the future economic life of the structure.

The resulting capitalization rate is then divided into the net income earned by the improvements. This computation will reveal the value of the improvements through the Income Approach. To this sum is added the value of the land, the product of which is the value estimate of the property through the Income Approach.

This approach of value is best utilized in investment type properties which produce a rental income. For the purpose of demonstration a newer 12-unit apartment house (all one-bedroom units) with a future economic life of 50 years will be used as an example. It will be assumed through comparison that the risk-interest rate is 6.5%. The format of the income approach is shown above.

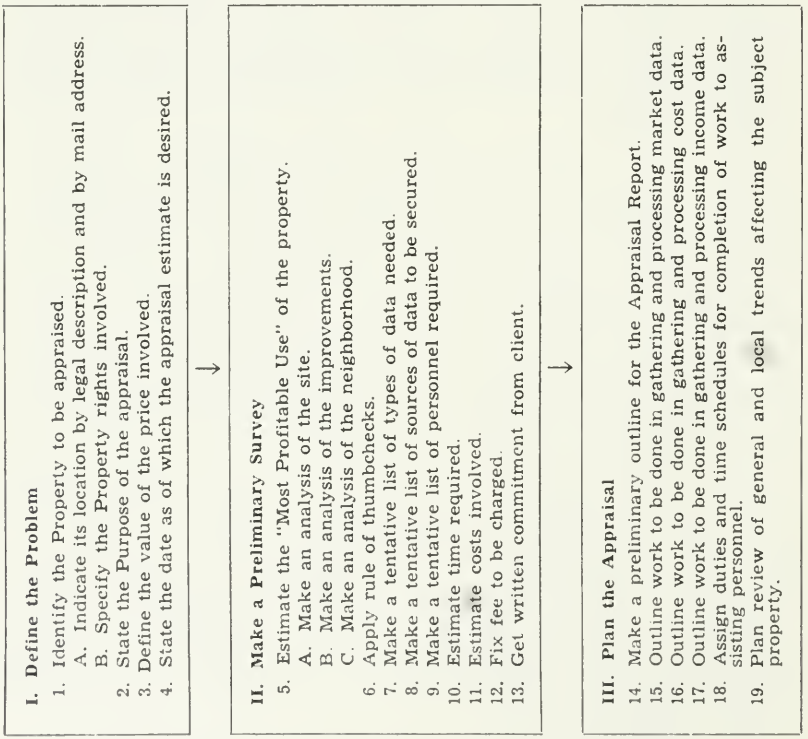
Market Data Approach—This third approach to value is sometimes referred to as the Comparable Sales Approach, for in this approach to value an analysis is made of the current sales of similar properties in the neighborhood. Known sales information of comparable properties is best secured through abstracting companies, real estate brokers, business newspapers, and known sales publications services. Examination, verification and comparison of these known sales is necessary to determine their similarity to the property being appraised. Personal verification through the buyer, seller or agent is necessary to properly determine the motives of the buyer and seller. In all instances it must be determined that the transaction was conducted at "arm's length," in which the buyer and seller are not acting under compulsion. The terms of the sale should be investigated and properties with unusually low down payments should be very carefully considered before being used. Inquiry should be made regarding the possible "income tax motives" of both the buyer and seller. The resulting known sales should be compared to the subject property and adjustments should be made to compensate for the differences in the properties.

This approach to value is best utilized in the evaluation of vacant development land, farm land, or residential properties

that are frequently sold in the market place. Generally this is the approach to value which is most commonly used by the buying public.

Correlation of the Three Approaches and Final Value Estimate—The three approaches to value should each be determined independently. In most instances these three approaches will reveal a different value estimate. These approaches are now considered in their relationship to one another and the greatest weight should be given to the approach which, in the appraiser's opinion, contains the most accurate and justifiable data. The final estimate of value is then determined after carefully weighing each approach.

The American Institute of Real Estate Appraisers has prepared an Appraisal Process Chart which is suggested as an outline for a complete appraisal. In most instances compliance with the procedures outlined in this chart are necessary for a complete appraisal. This chart is shown as follows:


THE APPRAISAL PROCESS
I. Define the Problem
1. Identify the Property to be appraised.
A. Indicate its location by legal description and by mail address.
B. Specify the Property rights involved.
2. State the Purpose of the appraisal.
3. Define the value of the price involved.
4. State the date as of which the appraisal estimate is desired.
II. Make a Preliminary Survey
5. Estimate the "Most Profitable Use" of the property.
A. Make an analysis of the site.
B. Make an analysis of the improvements.
C. Make an analysis of the neighborhood.
6. Apply rule of thumbchecks.
7. Make a tentative list of types of data needed.
8. Make a tentative list of sources of data to be secured.
9. Make a tentative list of personnel required.
10. Estimate time required.
11. Estimate costs involved.
12. Fix fee to be charged.
13. Get written commitment from client.
III. Plan the Appraisal
14. Make a preliminary outline for the Appraisal Report.
15. Outline work to be done in gathering and processing market data.
16. Outline work to be done in gathering and processing cost data.
17. Outline work to be done in gathering and processing income data.
18. Assign duties and time schedules for completion of work to assisting personnel.
19. Plan review of general and local trends affecting the subject property.

THE APPRAISAL PROCESS—(Continued)

IV. Apply the Cost Approach

20. Estimate and justify the value of the land included in the property.
21. Estimate and justify the reproduction cost new of the buildings and other improvements.
22. Estimate and justify loss in value from depreciation.
    - A. Deterioration.
    - B. Functional obsolescence.
    - C. Economic obsolescence.
23. Deduct depreciation from reproduction cost estimate.
24. Correlate cost data and make a preliminary cost approach estimate.

V. Apply the Income Approach

25. Analyze the gross income as to
    - A. Volume.
    - B. Quality.
    - C. Durability.
26. Prepare and justify a forecast of gross income.
27. Analyze past and current operating costs.
28. Prepare and justify a forecast of operating costs.
29. Compute the net income.
30. Select or build and justify a capitalization rate.
31. Estimate and justify probable future depreciation and select and justify the appropriate method of making provision for maintaining the capital fund.
32. Select and justify the appropriate method of capitalization.
33. Carry through the capitalization computations.
34. Correlate the income data and make a preliminary income approach estimate.

VI. Apply the Market Data Approach

35. Survey the area to locate comparable properties.
    - A. That have sold recently.
    - B. That are offered for sale.
    - C. On which offers have been made.
    - D. That are rented.
    - E. That are offered for rent.
    - F. That are vacant.
    - G. That are being constructed.
36. Gather and validate pertinent information about each comparable property.
37. Analyze sales, offerings, offers, and leases in regard to
    - A. Date of sale.
    - B. Length of time property was offered.
    - C. Advertising and sales efforts involved.
    - D. Terms of sale.
    - E. Motives of buyer and seller.
38. Compare subject property in detail with each comparable property.
39. Correlate the market data and make a preliminary market data estimate.

VII. Correlate the Three Approaches and Make a Final Value Estimate

40. Correlate all foregoing data and estimates into a final estimate of value by
    - A. A reconsideration of the purpose of the appraisal.
    - B. Careful review of each step in each approach to see if the range between the high and low figures can be reasonably narrowed.
    - C. The use of adjustment factors designed to reflect the adequacy and reliability of the available data.
41. Write the appraisal report.

PROFESSIONAL PRACTICES

The appraiser should not undertake to make an appraisal that is outside the field of his experience unless he obtains the assistance of an authority on such types of property, or unless the facts are fully disclosed to the client. In such circumstances the authority so engaged should be so identified and his contribution to the assignment should be clearly set forth.

When asked to make a formal appraisal of real property, the appraiser should not render an opinion without careful and thorough analysis and interpretation of all factors affecting the value of the property. His counsel constitutes a professional service.

The appraiser should not undertake to make an appraisal or render an opinion of value on any property where he has a present or contemplated interest unless such interest is specifically disclosed in the appraisal report. Under no circumstances should he undertake to make a formal appraisal when his employment or fee is contingent upon the amount of his appraisal.

The American Institute of Real Estate Appraisers in its Rules of Professional Ethics states the following points: It is unethical for an appraiser to accept an appraisal of a property if his employment or fee is contingent upon the value reported.

It is unethical for an appraiser to issue an appraisal report, if he is acting or intending to act in the capacity of broker, loan broker, or manager, or if he has an ownership, contemplated future ownership or any other interest in connection with the property appraised unless such interest or interests be fully disclosed in the appraisal certificate. [See Section 66-1937(11)].

It is the duty of an appraiser to hold as confidential the results and other findings of his appraisal until released from his obligation by the client or by due process of law.

It is the duty of an appraiser when appearing in a real estate valuation matter before a court of law to complete an adequate written appraisal of the property, signed by him.

Section XXI

Land Economics

Land resources of the United States and the manner in which they are used constitute an important basis for the wealth and continuing prosperity and well-being of the nation. Most are aware that few relationships are more fundamental or significant than that between man and land. The natural resources environment of land is necessary for human survival. From land comes standing room, living space, food, recreation and many raw materials which are necessities of life.

Land economics is a relatively young field of study. Because of its broad scope, land economics is a subject of interest among economists, planners, political scientists, real estate operators, farmers, architects, and others. The broad scope of land economics is illustrated by the three-fold context within which most economists see man's use of land resources. These three categories involve the: (1) physical and biological, (2) economic, and (3) institutional factors that affect man's use of land resources. These three categories of land characteristics affect property values, land development and investment costs, conservation practices, taxation and others.

The physical and biological framework is concerned with the natural environment which provides the site, physical support, and raw materials for man's activities. The physical and biological aspects of land affect both our total supply of land resources and the demands made against these resources.

The economic framework is concerned with the operation of the price system as it affects each individual in his attempt to make profitable use of his land resources base. It is concerned with the effects of value, costs, returns, and profits on allocation of land resources among the uses for production and consumption purposes.

The institutional framework is concerned with the role man's cultural environment and the forces of social and governmental action play in influencing the use of land resources. It is concerned with the impact of cultural attitudes, customs and traditions, legal arrangements, government programs and similar factors on man's use of the land resources.

Together with the level of technology, these three factors set the stage within which man's use of land takes place within a given time period. This is the stage within which the land economics course at universities is provided.

Land problems have been an important province of government since our country was founded. From the time of the

Revolutionary War until 1867 when Alaska was purchased, land acquisition was a major policy of the United States government. The land disposal period was also a major policy of the United States government. Various units of government in the United States now control and administer 29 percent of our total land area. These units of government depend upon property and other land-oriented taxes for much of their revenue. Government is carrying on active research and educational programs dealing with such land problems as reclamation, flood control, reforestation, conservation, farm acreage control, public housing, rent control and many other problems involving land use. Land economics provides the background and analytical tools necessary to evaluate these land problems and their solutions.

The farm land system, for the most part, is well adapted to the current needs of society and its productive and consumptive requirements. As a system, the farm land system in the United States works better than in most other countries of the world.

The most critical land problems today in the United States are in large cities with their complex space and transportation problems and the increasing demand for outdoor living. More than two-thirds of the people in the United States now live in cities. In response to these ever increasing urban problems a branch of land economics has grown up called urban economics. Urban economics concerns itself with problems of housing, transportation, taxation, and location of land uses.

In the United States we do not have shortages of land or a demand for land reform, but this does not free us from land problems. The people who own farms, forests, businesses, and residential property face numerous land resource based problems. Important among the problems of lands are acquisition, management, improvement, conservation and transfer of their properties. Some of these problems center around the individual operator's choice of enterprise, his managerial position and his willingness to bring new areas into use. Some of the problems for residential property owners are neighborhood deterioration, police and fire protection and inadequate streets.

Land economics provides a systematic body of knowledge which serves as a basis for discovering these problems and evaluating them in a objective-scientific manner. Land economics provides the necessary background for understanding more thoroughly real estate finance, law, appraisal and taxation.

Section XXII

Subdividing and Land Development

HISTORY

With the continued growth of population and the movement of people into the cities and suburban areas, new problems arise which only concerted public effort through governmental action can solve. These problems include the prevention of fraud, misrepresentation and deceit in the sale of subdivided property; the regulation of lot design and physical improvements for the orderly and proper development of the community; the construction of streets and highways and parking facilities adequate for our motorized society; the provision of a sufficiency of water; the protection of life and property by police and firemen; the maintenance of the purity of the air we breathe; the abatement of noise; the disposal of sewage and waste; and the provision, under public or regulated private auspices, of essential utility services.

If communities grow haphazardly, the problems are aggravated and new ones are added. Through state laws regulating the subdivision of real estate and by means of master plans, zoning laws and building codes, cities and counties strive to assure to their area the greatest possible livability, and to protect land values and the general welfare of the community. The real estate broker can often make a substantial contribution to the success of such efforts by contributing his ideas and support.

The subdivision developer combines in one organization the operations of manufacturer, wholesaler and retailer. It is necessary for him to have an accurate knowledge of every condition affecting the raw material, acreage, which when assembled and adequately financed must be manufactured or developed into the finished product, building sites or lots, and then retailed to the ultimate consumer, the individual family for the construction of its home, the contractor-builder for building a residence to be offered for sale, the investor for future use and to the commercial builder or investor for retail stores, apartments, office buildings, etc.

To be a successful subdivider, one must be a community builder, not a speculator. He must have enthusiasm for and put something of himself into the growth of his city and community. He must have imagination, above all, so as to be able to see the finished product, the completed home, the happy family, the successful shopping center.

He must first determine in his own mind, WHO his potential customers are going to be, WHAT he is trying to accomplish, WHERE it is going to take place, WHEN it will happen, HOW it should proceed and WHY the subdivision is going to be a success.

MARKET ANALYSIS

The first step the developer must take is to conduct a market analysis. We will presume that after considering various types of developments, i.e., residential, commercial, industrial or apartment complex, he has decided on the development of a residential subdivision.

In order to determine the best location, economic quality, price range, present needs or requirements of the community, size and potential of the subdivision, the developer must conduct some sort of market analysis. This may be derived from a comprehensive study of his own experiences, actual surveys conducted by himself or members of his organization, or by the employment of a market research firm.

This broad picture can be brought into focus by a thorough examination of facts and figures and a study of documented evidence. Many items are taken into consideration such as: needs of the community, availability of land, location, price, zoning, employment opportunities, public transportation, highways, shopping, schools, industry and recreational facilities and other amenities.

After an exhaustive study has been made, the developer or subdivider may then determine a market and general area, City, County or Section, which would best suit his endeavors.

He might then set out to locate raw undeveloped ground, in a proper location which could be purchased at a reasonable price with proper financing, market conditions, availability of public utilities, etc. in order to start the initial phase of the development of the subdivision. This, by no means, should be construed to mean that he is now ready to acquire ground, for there are many conditions which must be met prior to acquisition of the land even after a potential location is found. Some of these conditions will be discussed below.

LAND ACQUISITION

When the subdivider has located the raw ground that he feels has good growth potential, there are many ways in which the ground may be purchased. First of all, he could pay cash for the ground. If the development is to be quite sizeable, this could take a tremendous amount of cash on the part of the developer and be a serious drain on the financial resources of his organization and make it impossible for him to consummate the transaction. As in any real estate deal, many problems can be more easily overcome when a buyer who wants to buy is dealing with a seller who wants to sell. If this is the case, and the developer does not want to, or is not in a position to, make an extremely heavy investment in the ground alone, the seller could sell the ground to the developer with only a partial down payment, 25% of the total purchase price being a common fig-

ure, and the seller could then carry back a mortgage for the balance of the purchase price.

FINANCING

If the seller was not willing to do this, the developer could then possibly arrange outside financing in order to pay off the ground in full at the time of purchase. A land loan can be acquired through commercial or private banking facilities or even through an FHA land acquisition loan.

If partial financing is arranged for the purchase of the ground, or if the seller is carrying back a mortgage for a portion of the total price, it is a common practice for the holder of this note and deed of trust to subordinate his first position or mortgage to someone else who is making a development loan. This is generally the only way it is possible to obtain a development loan. This is what is commonly referred to as subordination. If the developer has paid cash for the ground himself, and is interested in obtaining a development loan, it is then customary for him to give the party making the development loan a first mortgage on the ground he now owns. He has then encumbered his own ground which was free and clear of any indebtedness to the development loan as security for said loan.

The difference between a land loan and a development loan is as follows: A land loan is the borrowing of funds for the purchase of raw ground. A development loan is the borrowing of funds for the development of that ground, i.e., for the purpose of obtaining funds for the installation of curb and gutter, sidewalks, sewer and water lines, storm drains and street paving as well as overlot grading.

This brief discussion on land acquisition and financing is intended to acquaint the reader with one of the problems which must be solved before the developer is ready to purchase the raw ground for subdividing. Many other problems must also be solved before he is ready to start, however.

ANNEXATION

The ground in which the developer is interested may be located in a city, town, or incorporated village. He would then not be interested or otherwise affected by the annexation issue.

However, it may be located within a specific county but in an unincorporated area, and may be adjacent to a larger city or incorporated village or town and may be eligible for annexation to that city, village or town. The developer may feel that there are advantages in staying in the area where the ground is presently situated, or he may feel that there are certain advantages in annexing the ground to that adjacent city.

If he does feel that the advantages of annexation outweigh

other considerations, he should take the necessary steps to insure that annexation is possible, if and when the ground is acquired, or make this a conditional clause in his contract for the purchase of the ground. Often annexation to a larger area may enhance the value of the ground and provide better police and fire protection, lower tax rates, lower sewer and water fees, free garbage collection, and availability of public transportation and utilities. It should also be noted, however, that annexation of ground often requires the donation of as much as 12% of the total ground being annexed, to the municipality annexing the ground, for use of parks and recreation and schools. This is an important aspect which the developer must consider. (See Section 11-401, Revised Codes of Montana).

GOVERNMENTAL AGENCIES

Often, there are many governmental agencies and private agencies or departments which must approve a preliminary plat prior to the final approval and recording of the final subdivision plat.

It would be prudent of the developer to check with the agencies or departments under whose jurisdiction the land would fall, prior to the acquisition of the land, in order to determine the problems involved and the economic feasibility of solving them. (See Section 11-601, et seq. Revised Codes of Montana).

ZONING

Prior to the acquisition of the ground, the developer must also check the existing zoning regulations which cover the ground, in order to make sure that he can develop or subdivide the ground as he plans. If the existing zoning on the ground is other than what he intends to develop, he must make sure that the zoning he will require for his development can be obtained, prior to the purchase or acquisition of the land. If not, he is taking a very sizeable and unnecessary risk with a considerable amount of money.

ENGINEERING

The basic function of the developer in the subdivision and development of raw ground is to transform that raw ground into finished building sites. To do this, he must plat the ground, install and complete such improvements as: overlot grading, curb and gutter, sidewalks, sanitary sewer and water lines, storm drainage system, street paving and provide such services as gas, electrical and telephone. In order to accomplish this task, extreme care, vigilance and close communications with city and county engineers must be maintained in order to

meet the requirements of that governmental body having jurisdiction over the subdivision.

It is also necessary that the developer have in his employ a competent professional engineer (civil), in order to work out the many hundreds of complex details and again maintain close communications with the city and county engineers as well as the VA and FHA engineering staffs. Very close supervision during the installation of these facilities is also required.

Should the area fall outside the boundaries of an existing water and sanitation district, an investigation should be made to determine whether or not the ground can be included in or annexed to a district. If not, the feasibility of forming a new district to provide water and sanitation facilities for the area must be explored.

The developer should also know under which of the many hundreds of special districts his land would fall, in order to be aware of the total tax burden that would effect future owners in his development.

LEGAL ASPECTS

It is worth noting that there are many complex legal details involved in the subdivision of ground, so good legal advice is a necessity. The contract for the initial purchase of the ground, correct legal descriptions, recording of plats, dedication of easements, escrow of funds, and the writing and recording of protective covenants are a few points where legal services are necessary.

FHA AND VA SUBDIVISION APPROVAL

Although obtaining FHA and VA subdivision approval is not an absolute requirement, the developer would be well advised to do so. This would be necessary in order to sell homes in the subdivision under the FHA and VA mortgage guaranty underwriting program. If this approval is not obtained, it would mean that all homes financed within the subdivision would have to be financed by conventional means only. This would surely limit the number of potential buyers of homes and thereby hamper the chances of having an orderly, rapid and successful development of the area.

The price range of the homes being built in the subdivision could more or less determine the effect. More expensive homes, $25,000 and up would be effected not nearly as much as those in the $10,000 to $25,000 price range.

SUBDIVISION PLANNING AND DESIGN

This is an important consideration to the developer. It can offer the purchasers of homes within the subdivision a well-planned community in which to live and raise their families. This can seriously effect the ultimate success of the subdivision. Some features that can be incorporated in a well-planned community are curvilinear streets, cul-de-sacs, underground utilities, tree planting, school sites, shopping area, transportation and recreational facilities. A combination of all of these features is desirable. Depending upon the size of the development, the subdivider may well find himself planning and designing commercial and apartment properties within the same residential development. This, of course, depends upon the size and the zoning available.

Homeowner associations, planned and legally constituted from the inception of the subdivision, will help insure a well maintained community, if there are common park and recreational areas within the subdivision.

BIDDING

After a determination of all of the aforesaid points have been made, problems solved, and acquisition of the ground taken place, bidding of the overlot grading, installation of the sanitary sewer lines, water lines, storm drainage system, curb, gutter and sidewalks, and street paving will occur. It is presumed that all of the engineering for these items has been completed and approval procured, including pricing of such items as gas, electricity, telephone and street lighting services.

This is generally accomplished by a competitive bidding system by subcontractors bidding their respective fields according to the plans and specifications designed by the developer's professional civil engineer. After completion of the bidding, contracts are let.

COMMENCEMENT OF CONSTRUCTION

After contracts are let, construction will usually begin within 30 to 60 days, weather permitting. All construction is closely supervised by local building inspectors and engineers employed by the developer. After months and months of preparation, this is the point when the subdivider sees his "baby" rapidly developing and maturing, and has the same heartwarming feeling that is enjoyed and cherished by all parents.

SALE OF SITES

Last but not least comes the sale of the improved building sites upon completion of construction. This, of course, is the ultimate goal of the developer. The success or failure of the

subdivision will now probably depend largely upon how well the developer has managed all of the aforementioned points covered in this chapter, for now the day of reckoning and judgment has come.

The beauty, convenience, livability, design and price of the finished building site will now be determined by the decisions the developer has made during the previous months. This is the culmination of many months and perhaps years of planning and hard work.

If those decisions, guesses, supervision, planning and thought of the developer have been right, the chances of a successful subdivision are very good.

SPECIAL TYPES OF SUBDIVISIONS

1. The Shopping Center. This is a group of commercial establishments planned, developed, owned and managed as a unit, with off-street parking provided on the property; and related in its location, size and type of stores to the trade area which it serves.

The regional shopping center has as its key tenant one or more major department stores and places most of the retail facilities of the downtown area in closer proximity to the homes of the customers. The neighborhood or convenience center has a supermarket, drug store or variety store as its key tenant and in essence replaces the typical strip type store built many years ago at the bus and street-car stops. The regional shopping center has comparison shoppers goods (clothing, shoes, etc.) as its primary merchandise, as compared with the subsistence type goods (food, drugs, etc.) in the neighborhood shopping center. There is also a community type shopping center, which is an overgrown neighborhood center, with perhaps a junior department store as its primary tenant. The discount house is emerging as a major factor in the retail business of modern America, and is taking its place in the shopping centers of today.

2. The co-operative apartment represents a form of ownership whereby the tenants own the apartment building, each tenant having some proprietary rights in his own apartment. This is actually a form of subdivision which may be accomplished before and during construction or with an existing building.

The method of "ownership" is through a corporation. Stock is purchased by the co-operative owner to the extent of the value of his apartment and he also receives a proprietary lease (for an indefinite term) on the apartment which he would then be said to "own."

Another method of "ownership" which operates similarly is wherein title lies in a trustee and the owners hold beneficial certificates.

3. The condominium is similar to the co-operative apartment but ownership by the individual occupants is more complete. A master deed is held by the corporate or trust owner and the individual "owners" have an "apartment deed" which is freely transferable and the apartment itself is clearly described and may be conveyed with few limitations.

Section XXIII

Sample Forms

The following set of forms includes samples of some of those most commonly used in property transactions in Montana. Other than forms similar to the Stevens-Ness forms shown, and the closing statement on pages 96 and 97, real estate brokers and salesmen should not attempt the preparation of the forms used in real estate practice. The preparation of legal forms may oftentimes appear simple, but the many complications involved can cause serious trouble for those untrained in the law. It is not possible to offer a complete explanation of all such complications and, therefore, it is suggested that the salesman or broker consult a licensed attorney for this service with respect to each transaction. An installment contract for deed has not been included here for the reason that such contract is subject to such a wide variety of variations that a standard form generally cannot be used to satisfaction. The Stevens-Ness forms included here are a copyrighted product and are not to be reproduced for the brokers' use. The inclusion of such forms is not to be considered as an endorsement by the Montana Real Estate Commission. Other forms which include the desired provisions are also acceptable.

The facts set out in the proposed real estate transaction contained in Section XVI have been used in preparing the forms which would be used in that example.

RESIDENCE PROPERTY

FORM NO. 674
COPYRIGHT
STEVENS-NESS LAW PUB. CO.
PORTLAND, OREGON SE

REAL ESTATE BROKER'S EMPLOYMENT CONTRACT

DESCRIPTION: Lots One (1) and Two (2) in Block Three (3) of the Optimistic Addition (commonly known as 100 Easy Street)

City of Hometown, County of Opportunity, State of Montana; for better description see owner's title deed on record, now made a part hereof. For personal property, if any to be included in property offered for sale for price next mentioned, see below or see signed inventory, to be attached.

Selling price, free of encumbrances: $ 15,000.00; Terms: Assume balance on mortgage at Hometown Bank of $6,750.00, balance in cash

Is signed inventory attached as part hereof? Yes ____; No X; to be attached as part hereof? Yes ____; No X

To Ajax Realty Co. (Real Estate Broker), Hometown (City), Montana (State), August 2 (Date), 19 65

FOR VALUE RECEIVED, you hereby are employed to sell or exchange the property described hereon at the selling price and on the terms noted. You hereby are authorized to accept a deposit on the purchase price. You may, if desired, secure the cooperation of any other broker, or group of brokers, in procuring a sale of said property in the event that you, or any other brokers cooperating with you, shall find a buyer ready and willing to enter into a deal for said price and terms, or such other terms and price as I may accept, or that during your employment you place me in contact with a buyer to or through whom at any time within 90 days after the termination of said employment I may sell or convey said property. I hereby agree to pay you in cash for your services as a commission equal in amount to 6 % of said selling price. I agree to convey said real estate to the purchaser by a good and sufficient deed, to transfer and deliver said personal property, if any, by good and sufficient bill of sale and to furnish either title insurance insuring or a complete abstract showing marketable title to said real estate and good right to convey. I hereby warrant that the information shown hereon below is true, that I am the owner of said property, that my title thereto is a good and marketable title, that the same is free of encumbrances except as shown hereunder under "Financial Details" and except taxes levied on said property for the current tax year which are to be pro rated between the seller and buyer. In case of an exchange, I have no objection to your representing and accepting compensation from the other party to the exchange as well as myself. I hereby authorize you and your customers to enter any part of said property at any reasonable time to show same. Also, I authorize you, at any time, to fill in and complete all or any part of the "Informative Data" below, except financial details. The following items are to be left upon the premises as part of the property purchased. All irrigation fixtures and equipment, plumbing and heating fixtures and equipment (including stoker and oil tanks but excluding fire place fixtures and equipment, water heaters, electric light fixtures, light bulbs and fluorescent lamps, bathroom fixtures, venetian blinds, window and door screens, storm doors and windows, attached linoleum, attached television antenna, all shrubs and trees and all fixtures except None. The following personal property is also included as a part of the property to be offered for sale for said price:- Electric range, and living room drapes and rods (or see signed inventory, if any, attached). This agreement expires at midnight on October 1, 19 65, but I further allow you a reasonable time thereafter to close any deal on which earnest money is then deposited. In case of suit or action on this contract, I agree to pay such additional sum as the court may adjudge reasonable as plaintiff's attorneys fees. It is further agreed that my signature affixed to the renewal clause below shall have the effect of renewing and extending your employment to a new date to be fixed by me on the same terms and all with the same effect as if the said new date had been fixed above as the expiration date of your employment.

*THIS LISTING IS AN EXCLUSIVE LISTING and you hereby are granted the absolute, sole and exclusive right to sell or exchange the said described property. In the event of any sale, by me or any other person, or of exchange or conveyance of said property, or any part thereof, during the term of your exclusive employment, or in case I withdraw the authority hereby given prior to said expiration date, I agree to pay you the said commission just the same as if a sale had actually been consummated by you.

I HEREBY CERTIFY THAT I HAVE RECEIVED A CARBON COPY OF THIS CONTRACT.

Accepted: August 2, 19 65

AJAX REALTY CO. by John Fireball (Broker)

Owner's Address 100 Easy Street City Hometown State Montana Phone 123-4567

Cecil E. Doe (SEAL)

Dollie Doe (Owner) (SEAL)

FOR VALUE RECEIVED, the above broker's employment hereby is renewed and extended to and including ____, 19____

Accepted: ____, 19____

____ (Broker)

____ (SEAL)

____ (Owner) (SEAL)

FINANCIAL DETAILS

Selling price (free of encumbrances)
$ 15,000.00 Terms: Assume mortgage with $100 per mo. payments; Bal. cash

Payments include: Prin. X Int. X Taxes X Ins. X
(Check items to be included in payments)
Interest on deferred payments 5 1/2 %
Fire ins. $12,000 3 yr Ann. prem. $ 148.32
Taxes last year $ 273.12
F.H.A. commitment $ None

ENCUMBRANCES Payable
1st mtg. $ 6,700.00 Int. 5 1/2% mthly
2nd mtg. $ None Int. %
Mtg. held by Hometown Bank
Contr. bal. $ None Int. %
Delinquent taxes $ 273.12
Municipal liens $ None

	B	1F	2F	A	Comment
Living rm.					
Dining rm.					
Kitchen					
Brkft. nk.					
Bedrooms					
Slpng. pch.					
Bath					
Den					
Party rm.					
Utility rm.					
Hallway					
Attic: Fin.		Unfin.			

RESIDENCE PROPERTY INFORMATIVE DATA

Office Listing No.

Address Bet. & District
Lot Block Addition Facing N S E W
Dimension of lot x Dimension of house x No. rooms No. stories Attic
Owner has: Abstract X Title Insurance Cert. of Title Contract Deed Warranty
Occupied by: Owner X Vacant Renter Renter's name Tel. Rent $
Owner's name Tel.
May we use pass key Key at
Possession may be had
Type of house
Type of construction Type of roof
Condition: roof paint exterior paint interior
Utilities: Electricity Gas Phone Water Garbage service
For details as to chattels included in sale: See employment contract See signed inventory

FEATURES & FINISH	HEATING	OUTSIDE	DISTANCE TO
Sink	House	Garage: Sgle. Dbl.	Bus or carline
L. trays		Lawn	Name of line
Shower		Garden	Grade school
		Shrubbery	High school
Hdwd. floor			Pub. park
Flr floor			Grocery store
Plaster ceil.			MISCELLANEOUS
Beam ceil.	Water		Sewer
Rms. papered		STREETS	Cesspool
Rms. tinted	BASEMENT	Paved	Septic tank
Ex. finish	Full Part	Macadam	Outdoor frplce.
Nat. finish	Fin. Unfin.	Graded	Walks
	Floor drain	Ungraded	Weatherstripping
		Sidewalk	Insulation
		Alley	Wired elect. stove

Remarks: Will provide Abstract of Title and Warranty Deed, and will prorate fire insurance and taxes to date of possession. Seller purchased 3-yr. fire policy April 1, 1964. Buyer must pay all costs of financing

Listed by Fireball
Signs permitted Yes
Inspected by

Will consider exchange for

FORM No. 740
Copyright (SC)
Steven-Ness Law Publishing Co.
Portland, Ore.

RECEIPT AND AGREEMENT TO SELL AND PURCHASE

Hometown, Montana, August 17, 19 65

RECEIVED FROM Robert A. Rowe and Ruby H. Rowe (hereinafter referred to as purchaser)
the sum of Nine Hundred and No/100 - - - - - - - - - - - - - - - Dollars ($ 900.00) as a deposit and earnest money in
part payment of the purchase price of the following described real property situated in City of Hometown, County of Opportunity,
State of Montana to wit: Lots One (1) and Two (2) in Block Three (3) of the Optimistic Addition

All irrigation fixtures and equipment, plumbing and heating fixtures and equipment, including stoker and oil tanks, water heaters and burners, electric light fixtures (excluding bulbs), bathroom fixtures, roller shades, curtain rods and fixtures, venetian blinds, window and door screens, storm doors and windows, linoleum, attached television antenna, all shrubs and trees, and all other fixtures attached thereto, except None
are to be left upon the premises as a part of the property purchased. The following personal property is also to be left upon the premises as a part of the property purchased:
Electric range, and living room drapes and rods

It is hereby agreed that the total purchase price is the sum of _____ Dollars ($ 15,000.00)
payable as follows: The earnest money hereinabove receipted for in the sum of _____ Dollars ($ 900.00)
and the balance of the purchase price in the sum of _____ Dollars ($ 14,100.00)
to be paid as follows: (If on contract, state terms generally, and if escrow, also name of escrow holder)

Balance outstanding on mortgage to Hometown Bank	6,750.00
	7,350.00
Second mortgage to sellers	1,800.00
Cash to sellers on closing (subject to adjustments stated below)	5,550.00

1 It is further agreed: seller shall at his expense furnish purchaser an Abstract of Title continued to a date subsequent hereto showing merchantable title to the above described property vested in seller, or in lieu thereof, at seller's option, a title insurance policy insuring title thereto vested in purchaser, free and clear of all liens and encumbrances except Existing mortgage as above

It is further agreed that the broker assumes no responsibility in regard to the title and broker recommends that purchaser have the Abstract of Title or Title Insurance Policy examined by an attorney.

2 The real property is to be conveyed by Warranty Deed to joint tenants and the personal property by Bill of Sale, free and clear of all encumbrances except building and zoning ordinances and regulations, building and use restrictions, rights of way and easements, reservations in Federal patents and State deeds and those enumerated in Section 1 above.

3. Seller shall pay all of the taxes and assessments for 8.5 / 12ths of 19 65 and prior years and purchaser shall pay all taxes and assessments thereafter. Rents, insurance and interest on mortgage or contract indebtedness shall be pro-rated as of September 15, 1965 Encumbrances to be discharged by seller may at his option be paid out of the purchase money at the date of closing.

4. If seller does not approve this sale within 5 days hereafter, or if seller's title is not merchantable or insurable and cannot be made so within a reasonable time after written notice containing statement of defects is delivered to seller, then said earnest money herein receipted for shall be returned to the purchaser on demand and all rights of purchaser terminated unless purchaser waives said defects and elects to purchase; but if said sale is approved by the seller and seller's said title is merchantable or insurable and purchaser neglects or refuses to complete the purchase or shall fail to pay the balance of the purchase price as hereinabove provided, then said earnest money shall be forfeited to the seller as liquidated damages and not as a penalty and this agreement here upon shall be of no further force or effect.

5 Possession shall be delivered purchaser on or before the 15th day of September, 19 65

6 Purchaser enters into this agreement in full reliance upon his independent investigation and judgment and there are no verbal or other agreements which modify or affect this agreement.

7 Time is of the essence of this agreement. This agreement is binding upon the heirs, executors, administrators, successors and assigns and each of the parties hereto. However, purchaser's rights herein are not assignable without seller's written consent.

8 Special provisions: Buyer to pay all other closing costs except preparation and recording of satisfaction of existing mortgage, preparation of deed and revenue stamps Fire Insurance and utilities to be prorated as of Sept 15, 1965. Second mortgage to sellers in amount of $1800.00 payable @ $50 per mo. inclusive of 6% int. starting Oct. 1, 1965, with provision for accelerated payments.

AJAX REALTY CO. Agent, By John Fireball Agents for Seller

I hereby agree to purchase the above described property and pay the price of Fifteen Thousand and No/100 - - - - - - - - - - Dollars ($ 15,000.00) as set forth above and grant to said agent 5 days hereafter to secure Seller's acceptance hereof, during which period my said offer shall not be subject to revocation. I/we hereby acknowledge receipt of a copy of this Receipt and Agreement to Sell and Purchase, bearing the Agent's and my/our signatures.

Address 200 Crowded Lane, Hometown, Montana — Robert A. Rowe

Phone 123-4567 — Ruby H. Rowe Purchaser

For valuable consideration I/we agree to sell and convey to the Purchaser the above described property on the terms and conditions hereinabove stated and agree to pay to the above named agent a commission amounting to 6 percent of the above mentioned selling price for services rendered in this transaction. In the event of a forfeiture of the deposit as above provided, the said deposit shall be paid to or retained by the agent to the extent of the agreed upon commission with residue to the seller. I/we authorize said agent to pay out of the cash proceeds of sale the expense of furnishing evidence of title, of recording fees and revenue stamps, if any, as well as any encumbrances on said premises payable by me at/or before closing. I/we acknowledge receipt of a copy of this Receipt and Agreement bearing my/our signature and that of the purchaser named above.

Dated this 18th day of August, 19 65 — Cecil E. Doe

Address 100 Easy Street, Hometown, Montana — Dollie Doe Seller

(If husband and wife both must sign.)

Satisfaction of Mortgage

EXAMPLE

KNOW ALL MEN BY THESE PRESENTS:

THAT Hometown Bank, a National Banking Institution, with its principal place of business at Hometown, Montana,

do es hereby certify and declare that a certain Mortgage, bearing date the 10th day of April, A.D. 19 66, made and executed by Cecil E. Doe and Dollie Doe, the part ies of the first part, mentioned in said Mortgage to said Hometown Bank, the part y of the second part, therein mentioned; and given to secure the payment of a promissory note in the principal sum of Ten Thousand and No/100 Dollars ($10,000.00)

and which Mortgage was duly recorded in the office of the County Clerk and Recorder of Opportunity County, State of Montana, on the 11th day of April, A.D. 66, at two o'clock P.M., in Book 100 of Mortgages on Page 200, and said Mortgage together with the debt thereby secured, is hereby fully paid, satisfied and discharged.

IN WITNESS WHEREOF, the undersigned corporation has caused this instrument to be executed by its proper officers, duly authorized, and its corporate seal to be affixed this 15th day of September, 19 69.

HOMETOWN BANK

By: Larry L. Lender
Its Vice-President

ATTEST:

Richard Recordkeeper
Its Secretary

(CORPORATE SEAL)

STATE OF MONTANA }
County of Opportunity } ss.

On this 15th day of September, in the year nineteen hundred and sixty-nine, before me, John P. Notary, a Notary Public for the State of Montana, personally appeared Larry L. Lender

and Richard Recordkeeper

known to me to be the Vice-President and Secretary, respectively, of the corporation that executed the within instrument, and acknowledged to me that they executed the same on behalf of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

John P. Notary

Notary Public for the State of Montana.
Residing at Hometown, Montana .
My Commission expires July 5, 1972 .

(NOTARIAL SEAL)

Warranty Deed To Joint Tenants, With Right Of Survivorship

EXAMPLE

THIS INDENTURE, made the 15th day of September A.D. one thousand nine hundred and sixty-nine BETWEEN Cecil E. Doe and Dollie Doe, husband and wife,

of Hometown, Montana, PART ies of the FIRST PART, and Robert A. Rowe and Ruby H. Rowe, husband and wife, as joint tenants with right of survivorship, and not as tenants in common,

of Hometown, Montana, the PARTIES of the SECOND PART;

WITNESSETH, that the said PART ies of the FIRST PART, for and in consideration of the sum of One and No/100 - - - - - - Dollars ($1.00) lawful money of the United States of America together with other good and valuable considerations to them in hand paid by said PARTIES of the SECOND PART, the receipt whereof is hereby acknowledged, do _____ by these presents grant, bargain, sell, convey, warrant and confirm unto the said PARTIES of the SECOND PART, AS JOINT TENANTS AND TO THE SURVIVOR OF SAID NAMED JOINT TENANTS, (and not as tenants in common) and to heirs and assigns of such survivor forever, the hereinafter described real estate situated in the city of Hometown, County of Opportunity, and State of Montana, to wit:

Lots One (1) and Two (2) in Block Three (3) of the Optimistic Addition to the City of Hometown, County of Opportunity, State of Montana, as said Lots and Block are numbered, designated and described on the official plot of said Addition, on file and of record in the office of the County Clerk and Recorder of said County of Opportunity, State of Montana.

TOGETHER, with all and singular the hereinbefore described premises, all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder

and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim, and demand whatsoever, as well in law as in equity, of the said PART ies of the FIRST PART, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging, TO HAVE AND TO HOLD, all and singular the above mentioned and described premises unto the said PARTIES of the SECOND PART, as joint tenants with right of survivorship (and not as tenants in common) and to the heirs and assigns of the survivor of said named joint tenants forever.

And the said PART ies of the FIRST PART, for themselves and for their heirs, do hereby covenant that they will forever WARRANT and DEFEND all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said PARTIES of the SECOND PART, as joint tenants with right of survivorship (and not as tenants in common) and to the heirs and assigns of the survivor of said named joint tenants, against all acts and deeds of the said PART ies of the FIRST PART, and all and every person and persons whomsoever lawfully claiming or to claim the same, save and except taxes for the year 1965 and thereafter.

IN WITNESS WHEREOF, the said PART ies of the FIRST PART ha ve hereunto set their hand s and seal s the day and year first hereinbefore written.

Signed, Sealed and Delivered in the presence of	Cecil E. Doe (SEAL)
	Dollie Doe (SEAL)
	(SEAL)
	(SEAL)

STATE OF MONTANA }
County of Opportunity } ss.

On this 15th day of September in the year nineteen hundred and sixty-nine before me, John P. Notary, a Notary Public for the State of Montana, personally appeared

Cecil E. Doe and Dollie Doe

known to me to be the person s whose name s are subscribed

to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

John P. Notary

Notary Public for the State of Montana.
Residing at Hometown, Montana.
My Commission expires July 5, 1972.

(NOTARIAL SEAL)

Bill Of Sale

EXAMPLE

KNOW ALL MEN BY THESE PRESENTS: That Cecil E. Doe and Dollie Doe of Hometown, Montana, part ies of the first part, for and in consideration of the sum of One and No/100 - - - - Dollars ($1.00) together with other good and valuable considerations in hand paid by Robert A. Rowe and Ruby H. Rowe, part ies of the second part, receipt whereof is hereby acknowledged, do bargain, sell, transfer and deliver over unto the part ies of the second part, as joint tenants and to the survivor of said named joint tenants (and not as tenants in common) and to the heirs and assigns of such survivor, the following chattels:

One Delux Utopian Electric Range, Serial No. A-1234567;
All draperies and drapery rods presently existing in the
living room of the residence located at 100 Easy Street,
Hometown, Montana, and covering two windows.

TO HAVE AND TO HOLD the same, to the said part ies of the second part, as joint tenants and to the survivor of said named joint tenants (and not as tenants in common) and to the heirs and assigns of such survivor FOREVER; and they do , for themselves and their heirs and assigns, covenant and agree to warrant and defend and do hereby warrant the title of said property, goods and chattels and the sale hereby made, unto the said part ies of the second part, as joint tenants with right of survivorship and to the survivor of said joint tenants against all and every person and persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, We have hereunto set our hand s and seal the 1st day of September in the year of our Lord one thousand nine hundred and sixty-nine .

Cecil E. Doe (SEAL)

Dollie Doe (SEAL)

STATE OF MONTANA }
County of Opportunity } ss.

On this 15th day of September, A.D. 19 69, before me, John P. Notary, a Notary Public for the State of Montana, personally appeared Cecil E. Doe and Dollie Doe known to me to be the person s whose name s are subscribed to the within instrument, and acknowledged to me that t he y executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

John P. Notary
Notary Public for the State of Montana.
Residing at Hometown, Montana.
My Commission expires July 5, 1972.

Promissory Note

EXAMPLE

$1,800.00 Hometown, Montana
September 15, 1969

FOR VALUE RECEIVED, the undersigned jointly and severally promise to pay to Cecil E. Doe and Dollie Doe of Hometown, Montana, on order, the sum of Eighteen Hundred and No/100 - - - Dollars ($1,800.00) together with interest from date at the rate of six per cent (6%) per annum on unpaid balances of principal, payable as follows: $50.00 per month, payable on or before the 1st day of October, 19 69, and on or before the 1st day of each succeeding month thereafter until said principal and interest shall have been paid in full, said payments to be applied first to interest and the balance upon the unpaid principal.

If default be made in the payment of any installment under this note, and if the default is not made good prior to the due date of the next such installment, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. In the event of default it is agreed that the holder of this note may recover such necessary expenses as may be incurred in collection, including a reasonable attorney's fee.

The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, demand and notice of dishonor and nonpayment of this note, and consent to any and all extensions of time, renewals, waivers or modifications that may be granted by the holder hereof with respect to the payment or other provisions of this note, and to the release of any security, or any part thereof with or without substitution.

Address: 200 Crowded Lane, Hometown, Mont. Robert A. Rowe

Address: 200 Crowded Lane, Hometown, Mont. Ruby H. Rowe

Mortgage

EXAMPLE

THIS INDENTURE, Made this 15th day of September in the year of our Lord one thousand nine hundred and sixty-nine between Robert A. Rowe and Ruby H. Rowe, husband and wife, of Hometown, Montana, Parties of the First Part, and Cecil E. Doe and Dollie Doe, husband and wife, of Hometown, Montana the part ies of the SECOND PART.

WITNESSETH: That the said part ies of the FIRST PART, for and in consideration of the sum of Eighteen Hundred and No/100 DOLLARS ($1,800) lawful money of the United States of America, to them in hand paid by the said part ies of the second part, the receipt whereof is hereby acknowledged, ha ve GRANTED, BARGAINED, SOLD AND CONVEYED, and by these presents do Grant, Bargain, Sell and Convey unto the said part ies of the second part, and to their heirs and assigns, forever, all th ose certain lot s, piece s, or parcel s of land, situate, lying and being in the County of Opportunity, State of Montana, and particularly described as follows, to-wit:

Lots One (1) and Two (2) in Block Three (3) of the Optimistic Addition to the City of Hometown, County of Opportunity, State of Montana, as said Lots and Block are numbered, designated and described on the official plat of said Addition, on file and of record in the office of the County Clerk and Recorder of said County of Opportunity, State of Montana.

THIS GRANT is intended as a mortgage to secure the payment of a certain promissory note of even date herewith; executed and delivered by the said first parties to the said part ies of the second part, which said note is more particularly described as follows, to-wit:

PROMISSORY NOTE

"$1,800.00 Hometown, Montana
September 15, 19 69

FOR VALUE RECEIVED, the undersigned jointly and severally promise to pay to Cecil E. Doe and Dollie Doe of Hometown, Montana, or order, the sum of Eighteen Hundred and No/100 - - -

Dollars ($1,800.00) together with interest from date at the rate of six per cent (6%) per annum on unpaid balances of principal, payable as follows: $50.00 per month, payable on or before the 1st day of October, 19 69, and on or before the 1st day of each succeeding month thereafter until said principal and interest shall have been paid in full, said payments to be applied first to interest and the balance upon the unpaid principal.

If default be made in the payment of any installment under this note, and if the default is not made good prior to the due date of the next such installment, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. In the event of default it is agreed that the holder of this note may recover such necessary expenses as may be incurred in collection, including a reasonable attorney's fee.

The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, demand and notice of dishonor and nonpayment of this note, and consent to any and all extensions of time, renewals, waivers or modifications that may be granted by the holder hereof with respect to the payment or other provisions of this note, and to the release of any security, or any part thereof with or without substitution.

_____

_____

_____

_____

Address: 200 Crowded Lane, Hometown, Mont. Robert A. Rowe.
Address: 200 Crowded Lane, Hometown, Mont. Ruby H. Rowe."

AND THESE PRESENTS SHALL BE VOID if such payment be made. But in case default shall be made in the payment of said principal sum _____ of money, or any part thereof, as provided in said note _____ or if the interest that may grow due thereon, or any part thereof, shall be due and unpaid for the space of 30 days after the same should have been paid, according to the terms of said promissory note _____ then and from thenceforth it shall be optional with the said part ies of the second part, their heirs, executors, administrators or assigns to consider the whole of said principal sum _____ expressed in said note _____ as immediately due and payable, although the time expressed in said note _____ for the payment thereof shall not have arrived; and

immediately to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same and all benefits and equity of redemption of the said part ies of the first part, their heirs, executors, administrators, or assigns, according to law, and out of the money arising from such sale, to retain the principal and interest which shall then be due on said promissory note _____, together with the costs and charges of foreclosure suit and costs of abtract, including a reasonable counsel fee, to be fixed and allowed by the court, and also the amounts of all such payments of taxes, assessments, encumbrances or insurance as may have been made by said part ies of the second part, their heirs, executors, administrators or assigns, by reason of the permission hereinafter allowed, rendering the overplus of the purchase money, if any there shall be, unto the said part ies of the first part, their heirs, executors, administrators or assigns. And the said part ies of the first part do _____ hereby further covenant, promise and agree, to and with the said part ies of the second part, to pay and discharge, at maturity, all such taxes or assessments, liens, or other encumbrances, now subsisting or hereafter to be laid or imposed upon said premises, or which may be in effect a prior charge thereupon to these presents, and to keep the improvements on said property insured at the maximum insurable amount as against fire, under a policy payable to second parties and first parties as their interests appear, during the continuance hereof, and in default thereof, the said part ies of the second part may pay and discharge the same, and may at their option keep fully insured against all risks by fire, the buildings which are now or may be hereafter erected thereon, at the expense of the said part ies of the first part, and the sum so paid shall be repayable in the same kind of money or currency in which the same may have been paid, and shall bear interest at the rate of ten (10) per cent per annum until paid, and shall be considered as secured by these presents and be a lien upon said premises, and shall be deducted from the proceeds of the sale thereof, above mentioned, and interest as herein provided.

IN WITNESS WHEREOF, the said part ies of the first part ha ve hereunto set their hand and seal s the day and year first above written.

Signed, Sealed and Delivered in the presence of	Robert A. Rowe	(SEAL)
	Ruby H. Rowe	(SEAL)
		(SEAL)

STATE OF MONTANA }
County of Opportunity } ss.

On this 15th day of September in the year nineteen hundred and sixty-nine, before me, John P. Notary, a Notary Public in and for the State of Montana, personally appeared Robert A. Rowe and Ruby H. Rowe, known to me to be the person s whose name s are subscribed to the within instrument, and acknowledged to me that t he y executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

John P. Notary
Notary Public for the State of Montana.
Residing at Hometown, Montana.
My Commission expires July 5, 1972.

(NOTARIAL SEAL)

Quit Claim Deed

EXAMPLE

THIS INDENTURE, Made the 10th day of July , in the year of our Lord one thousand nine hundred and sixty-nine between Donald D. Seller and Donna D. Seller, husband and wife, of Boomtown, Montana , the part ies of the first part, and Bryon B. Buyer and Bernice B. Buyer, husband and wife, of Boomtown, Montana , the part ies of the SECOND PART, WITNESSETH: That the said part ies of the FIRST PART for and in consideration of the sum of One and No/100 - - - Dollars ($1.00) and other good and valuable considerations to them in hand paid by the said part ies of the SECOND PART, receipt of which is hereby acknowledged; do hereby convey, remise, release and forever quitclaim unto the said part ies of the second part, and to their heirs, and assigns, all right, title and interest in and to the following described real estate, situated in the City of Boomtown , County of Speculation , and State of Montana, to-wit:

Lots Ten (10) and Eleven (11) in Block Twelve (12) of the Value Addition of the City of Boomtown, County of Speculation, State of Montana, as said Lots and Block are numbered, designated and described on the official plat of said Addition, on file and of record in the office of the County Clerk and Recorder of said County of Speculation, State of Montana;

together with all the tenements, hereditaments, and appurtenances thereto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity, of the said part ies of the first part, of, in or to the said premises and every part and parcel thereof.

TO HAVE AND TO HOLD, all and singular the said premises, with the appurtenances

unto the said part ies of the second part, their heirs and assigns forever.

IN WITNESS WHEREOF, the said part ies of the first part ha ve hereunto set their hand s and seal s the day and year first above written.

Signed, Sealed and Delivered in the Presence of

Donald D. Seller (SEAL)

Donna D. Seller (SEAL)

STATE OF MONTANA }
County of Speculation } ss.

On this 10th day of July, nineteen hundred and sixty-nine, before me, Nadine A. Notary, a Notary Public for the State of Montana, personally appeared Donald D. Seller and Donna D. Seller known to me to be the person s whose name s are subscribed to the within instrument, and acknowledged to me that t he y executed the same.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

Nadine A. Notary
Notary Public for the State of Montana.

Residing at Boomtown, Montana. My Commission expires Oct. 11, 19 69.

(NOTARIAL SEAL)

Montana Trust Indenture

EXAMPLE

THIS TRUST INDENTURE, Made this 10th day of July , 19 69 between Bryon B. Buyer and Bernice B. Buyer, husband and wife,

whose mailing address is 200 Sportscar Drive, Boomtown , Montana , as GRANTOR S, and Trustworthy Savings and Loan Association, a Montana corporation , with principal office at Boomtown, Montana , as TRUSTEE, and Donald D. Seller and Donna D. Seller, husband and wife, whose mailing address is 100 Wildcat Lane, Boomtown, Montana , as BENEFICIARY,

WITNESSETH. That Grantor hereby irrevocably GRANTS BARGAINS, SELLS, CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, nevertheless, WITH POWER OF SALE that certain real property, which does not exceed three (3) acres in area, situated in the County of Speculation , State of Montana, particularly described as follows, to-wit:

> Lots Ten (10) and Eleven (11) in Block Twelve (12) of the Value Addition to the City of Boomtown, County of Speculation, State of Montana, as said Lots and Block are numbered, designated and described on the official plat of said Addition, on file and of record in the office of the County Clerk and Recorder of said County of Speculation, State of Montana;

TOGETHER WITH: (1) All buildings fixtures and improvements thereon and all water rights, rights-of way, tenements, hereditaments privileges and appurtenances thereunto belonging, now owned or hereafter acquired, now or evidenced, used or enjoyed with said premises or belonging to the same; (2) All right, title and interest hereafter acquired in or to any of said premises, hereby also releasing, relinquishing and waiving all exemptions, rights of dower and homestead, in or to said premises, vested or inchoate; (3) All heating, air conditioning, plumbing and lighting facilities, equipment and fixtures now or hereafter installed upon or within said premises, used or proper or necessary to constitute the said premises a habitable useable or operating unit—all of said property being designated and deemed for the purposes of this instrument a part of the realty, and (4) All of the rents, issues and profits of said premises, SUBJECT, HOWEVER, to the right, power and authority hereinafter conferred upon Beneficiary to collect and apply such rents, issues and profits;

FOR THE PURPOSE OF SECURING: (1) Payment of the principal sum of Ten Thousand and No/100 - - Dollars ($10 000 00) with interest thereon according to the terms of a promissory note, dated July 10 , 19 69 (and any extensions and/or renewals or modifications thereof), made by Grantor payable to the order of Beneficiary in installments, the last of which, unless sooner paid, will be due and payable on July 10 , 19 75 ; (2) Payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided; and (3) Performance of each agreement of Grantor herein and in said note contained.

TO PROTECT THE SECURITY OF THIS TRUST INDENTURE, AND FOR OTHER PURPOSES, GRANTOR AGREES:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete and restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, covenants and restrictions affecting said property, not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of the law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general; and, if the

loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property, Grantor further agrees:

(a) To commence construction promptly and to pursue the same with reasonable diligence to completion in accordance with plans and specifications satisfactory to the Beneficiary, and

(b) To allow Beneficiary to inspect said property at all times during construction.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Grantor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon as provided in this instrument, and as allowed by law.

2. To provide, maintain and deliver to Beneficiary, insurance of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on said property Such insurance shall be carried in companies approved by the Beneficiary with less payable clause in favor of and in form acceptable to Beneficiary. In the event of loss, Grantor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Grantor and Beneficiary jointly, then the insurance proceeds, or any part indebtedness hereby secured or to the restoration or repair of the property damaged.

3. To deliver to. pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. To pay before delinquent all taxes and assessments, including interest and penalties, affecting said premises and improvements; to promptly pay and discharge all encumbrances, charges and liens on said property which at any time are, or appear to be, prior or superior hereto. In addition to the payments due in accordance with the terms of the note hereby secured, Grantor shall, at the option and on demand of the Beneficiary, pay to the Beneficiary monthly and concurrently with payment of principal and interest, a sum equal to one-twelfth (1/12th) of the annual taxes, assessments, insurance premiums, maintenance and other charges upon the property, as estimated by the Beneficiary, in trust nevertheless for Grantor's use and benefit and for payment by Beneficiary of any such items when due. The failure of Grantor to make any of such payments shall constitute a default under this trust.

5. Except as otherwise expressly provided herein, to pay all costs, fees and expenses of this trust, including cost of search and evidence of title, advertising and recording expense, documentary taxes and Trustee's and attorney's fees as allowed by law.

6. Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, without obligation so to do and without notice to or demand upon Grantor, and without releasing Grantor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof Beneficiary or Trustee being authorized to enter upon said property for such purposes.

7. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of eight per cent (8%) per annum until paid, and the payment thereof shall be secured hereby

IT IS MUTUALLY AGREED THAT:

8. Without affecting the liability of any person, including Grantor, for the payment of any Indebtedness secured hereby, or the lien of this Trust Indenture on the remainder of the property for the full amount of any indebtedness unpaid, Beneficiary and Trustee are respectively empowered as follows: Beneficiary may from time to time and without notice:

(a) Release any person liable for the payment of any of the indebtedness,

(b) Extend the time or otherwise alter the terms of payment of any of the indebtedness,

(c) Alter, substitute or release any property securing the indebtedness;

Trustee may, at any time and from time to time, upon the written request of Beneficiary:

(a) Consent to the making of any plat of the property,

(b) Join in granting any easement or creating any restriction thereon,

(c) Join in any subordination or other agreement affecting this Trust Indenture or the lien or charge thereof,

(d) Reconvey, without warranty, all or any part of the property.

9. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Trust Indenture and said note to Trustee for cancellation and retention and upon payment by Beneficiary of its fees Trustee shall reconvey to Grantor without warranty, the property then held hereunder.

10. As additional security, Grantor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Indenture and of any personal property located thereon. Until Grantor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder Grantor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Grantor shall default as aforesaid, Grantor's right to collect any of such monies shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such monies shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, not a subordination of the lien or charge of this Trust Indenture to any such tenancy, lease or option.

11. Upon any default by Grantor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Grantor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid; and apply the same, less cost and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

12. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire or other insurance policies, or compensation or awards for any taking or damage of said property, and the applications or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

13. Time is of the essence hereof. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause such property to be sold to satisfy the obligations hereof, and Trustee or Beneficiary shall file such notice for record, in each county wherein said property or some part thereof is situated. Beneficiary shall also deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

14. After the lapse of such time as may then be required by law following the recordation of said notice of default and of election to cause said property to be sold, and notice of default and notice of sale having been given as then required by law, Trustee, or its attorney, without demand on Grantor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Grantor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in cash in lawful money of the

United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding fifteen (15) days by public proclamation by such person at the time and place fixed in the notice of sale, and no other notice of the postponed sale need be given. Trustee shall execute and deliver to the purchaser its deed conveying said property so sold, but without any covenant of warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person including Beneficiary (but excluding Trustee) may bid at the sale. After deducting all costs and expenses of exercising the power of sale and of the sale, including cost of search and evidence of title, advertising and recording expense, documentary taxes and Trustee's and attorney's fees. Trustee shall apply the proceeds of sale to payment of all amounts secured hereby and due hereunder, including all sums expended by the Trustee and Beneficiary, or either of them, with accrued interest thereon at the rate of eight per cent (8%) per annum from the date of expenditure thereof, and the surplus, if any, to the person or persons legally entitled thereto; provided that the Trustee, in its discretion, may deposit such surplus with the County Clerk and Recorder of the county in which the sale took place.

15. Grantor agrees to surrender possession of the hereinabove described trust property to the purchaser at the aforesaid sale on the tenth (10th) day following said sale, in the event such possession has not previously been delivered by Grantor.

16. Each abstract of title, title insurance policy and all other evidences of title, and all hazard insurance policies placed or deposited with the Beneficiary shall be deemed an incident to the title to the trust property and upon foreclosure by exercise of power of sale, or otherwise, shall pass to the purchaser and the same are hereby pledged as additional security for payment of the indebtedness secured hereby.

17. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Indenture in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the Court.

18. Except as may be otherwise provided herein, Grantor agrees to pay to Beneficiary or Trustee the costs and expenses, including a reasonable attorney's fee, incurred by either of them in instituting, prosecuting or defending any Court action in which Grantor does not prevail, if such action involves the interpretation hereof or performance hereunder by a party hereto or the breach of any provision hereof by a party hereto, including but not limited to an action to obtain possession of the above described property after exercise of the power of sale granted hereunder.

19. This Trust Indenture shall apply to, insure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Grantor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Indenture whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

20. Trustee accepts this Trust when this Trust Indenture, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other trust indenture or of any action or proceeding in which Grantor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

21. This Trust Indenture is made within the State of Montana pursuant to the Small Tract Financing Act of Montana and is not made or taken in substitution for any mortgage in existence on the effective date of said Act.

22. Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinabove set forth.

IN WITNESS WHEREOF, the Grantor (has) (have) hereunto set (his) (her) (its) (their) hands the day and year first hereinabove written.

BRYON B. BUYER
BERNICE B. BUYER

STATE OF MONTANA
County of Speculation } ss.

On this 10th day of July, 19 69, before me, a Notary Public for the State of Montana, personally appeared Bryon B. Buyer and Bernice B. Buyer

known to me to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that (he) (she) (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial Seal the day and year first above written.

Nadine A. Notary

Notary Public for the State of Montana.
Residing at Boomtown, Montana .
My Commission expires Oct. 11, 1969 .

(NOTARIAL SEAL)

REQUEST FOR FULL RECONVEYANCE

TO: TRUSTEE July 10, 19 75

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Trust Indenture. Said note, together with all other indebtedness secured by said Trust Indenture, has been fully paid and satisfied and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Trust Indenture, to cancel said note above mentioned and all other evidences of indebtedness secured by said Trust Indenture delivered to you herewith, together with said Trust Indenture, and to reconvey, without warranty, to the parties designated by the terms of said Trust Indenture, all the estate now held by you thereunder.

Bryon B. Buyer

Bernice B. Buyer

Mail reconveyance to 200 Sportscar Drive, Boomtown, Montana

Deed of Reconveyance

EXAMPLE

KNOW ALL MEN BY THESE PRESENTS

That Trustworthy Savings and Loan Associatio , a Montana corporation, with its principal place of business at Boomtown, Montana,

as trustee, and pursuant to the written request of the beneficiary do es hereby grant, reconvey, release and quitclaim unto Bryon B. Buyer and Bernice B. Buyer, husband and wife, of Boomtown, Montana,

all the right, title, interest, claim or demand whatsoever acquired in, through or by that certain Trust Indenture bearing date of July 10 , 19 69 , and recorded in the office of the County Clerk and Recorder of Speculation County, State of Montana, on the 10th day of July , 19 69 , at two o'clock P.M., in Book 100 of Mortgages at page 300 to the premises situated in the County of Speculation , State of Montana, particularly described therein as follows, to-wit:

> Lots Ten (10) and Eleven (11) in Block Twelve (12) of the Value Addition to the City of Boomtown, County of Speculation, State of Montana, as said Lots and Block are numbered, designated and described on the official plat of said Addition, on file and of record in the office of the County Clerk and Recorder of said County of Speculation, State of Montana;

together with all appurtenances and privileges thereunto belonging or appertaining and do es certify that the obligation thereby secured, is fully paid, satisfied and discharged.

IN WITNESS WHEREOF, the undersigned corporation has caused this instrument to be executed by its proper officers, duly authorized, and its corporate seal to be affixed this 10th day of July , 19 75

TRUSTWORTHY SAVINGS AND LOAN ASSOCIATION

By: Frank F. Finance
Its Vice-President

ATTEST:

Rudolph R. Recordkeeper
Its Secretary

(CORPORATE SEAL)

STATE OF MONTANA }
County of Speculation } ss.

On this 10th day of July, in the year Nineteen Hundred and Seventy-five, before me, Nadine A. Notary, a Notary Public for the State of Montana, personally appeared Frank F. Finance and Rudolph R. Recordkeeper, known to me to be the Vice-President and Secretary, respectively, of the corporation that executed the within instrument, and acknowledged to me that they executed the same on behalf of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial Seal the day and year first above written.

Nadine A. Notary
Notary Public for the State of Montana.
Residing at Hometown, Montana.
My Commission expires July 5, 1978.

(NOTARIAL SEAL)

Commitment for Title Insurance

LOW-PREMIUM TITLE INSURANCE COMPANY
(A Stock Company)

a corporation of Montana, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

IN WITNESS WHEREOF, Low-Premium Title Insurance Company has caused this Commitment to be signed and sealed as of the effective date of Commitment shown in Schedule A, the Commitment to become valid when countersigned by an authorized signatory.

(CORPORATE SEAL)

Low Premium Title Insurance Co.

By: Frank Worthmore, President

ATTEST:

Justin Overworked
Secretary.

Issued by:

BOOMTOWN ABSTRACT CO.

By Simon Signatory
Authorized Agent

100 Insurance Avenue
Boomtown, Montana

SCHEDULE A

Number
100

Effective Date
July 1, 1969, at 5:00 P.M.

1. Policy or Policies to be issued:
   OWNER'S: $15,000.00
   Proposed Insured: Bryon B. Buyer and Bernice B. Buyer, husband and wife

2. The estate or interest in the land described or referred to in this Commitment and covered herein is a fee simple, and title thereto is at the effective date hereof vested in:

   Donald D. Seller and Donna D. Seller, husband and wife

3. The land referred to in the Commitment is described in Schedule C.

SCHEDULE B—Section 1

Number
100

The following are the requirements to be complied with:

1. Instrument(s) creating the estate or interest to be insured must be executed and filed for record, to-wit:
   Warranty Deed from Douglas D. Seller and Donna D. Seller, husband and wife, to Bryon B. Buyer and Bernice B. Buyer, husband and wife, conveying the lands described in Schedule C.

2. Payment of the full consideration to, or for the account of, the grantors or mortgagors.

3. Payment of all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable. (See below.)

4. Satisfactory evidence should be had that improvements and/or repairs or alterations thereto are completed; that contractor, subcontractors, labor and materialmen are all paid.

5. Pay the following:
   Delinquent taxes for the year 1968 in the amount of $300.00, plus penalty and interest.

6. Pay and satisfy of record that certain mortgage from Donald D. Seller and Donna D. Seller, husband and wife, to First National Bank and Trust Company of Boomtown, Montana, recorded in Book 90 of Mortgages at page 100, records of Speculation County, Montana.

SCHEDULE B—Section 2

Number
100

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

2. Any owner's policy issued pursuant hereto will contain under Schedule B the Standard exceptions set forth at the inside cover hereof.

3. Encroachments, overlaps, boundary line disputes, and any matter which would be disclosed by an accurate survey and inspection of the premises.

4. Reservations contained in Patent, United States of America, to John Oldtimer, recorded in Book "U. S." Patents, page 73, records of Speculation County, Montana.

5. Any lien, or right to a lien, for services, labor or material heretofore

or hereafter furnished, imposed by law and not shown by the public records.

6. Easements, or claims of easements, not shown by the public records.
7. Uniform Commercial Code filings, if any, on or relating to fixtures and equipment in or about any improvements on said land.
8. Rights or claims of parties in possession not shown by the public records.
9. Rights of Dower, homestead or other marital rights of the spouse, if any, of any individual insured.
10. All unpaid taxes and taxes or special assessments which are not shown as existing liens by the public records.

SCHEDULE C

Number
100

The land referred to in this Commitment is described as follows:
Lots 10 and 11 in Block 12 of the Value Addition to the City of Boomtown, County of Speculation, State of Montana.

STANDARD EXCEPTIONS FOR OWNER'S POLICY

The owner's policy will be subject to the mortgage, if any, noted under item one in Section 1 of Schedule B hereof and to the following exceptions: (1) rights or claims of parties in possession not shown by the public records; (2) encroachments, overlaps, boundary line disputes, and any matters which would be disclosed by an accurate survey and inspection of the premises; (3) easements, or claims of easements, not shown by the public records; (4) any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records; (5) taxes or special assessments which are not shown as existing liens by the public records; and (6) rights of dower, homestead or other marital rights of the spouse, if any, of any individual insured.

NOTE FOR LENDER

Unless otherwise stated in Schedule B—2 hereof, no restriction on subject property was filed for record subsequent to February 15, 1950, prohibiting sale or occupancy on the basis of race, color or creed.

CONDITIONS AND STIPULATIONS

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such

amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.

3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and the Conditions and Stipulaitions of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.

4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

(Form provided courtesy of American Land Title Association)

Owner's Title Insurance Policy

LOW-PREMIUM TITLE INSURANCE COMPANY
(A Stock Company)

a corporation of Montana, herein called the Company, for a valuable consideration, hereby insures the party named in Schedule A, hereinafter called the Insured, the heirs, devisees, personal representatives of such Insured, or, if a corporation, its successors by dissolution, merger or consolidation, against loss or damage not exceeding the amount stated in Schedule A, together with costs, attorneys' fees and expenses which the Company may become obligated to pay as provided in the Conditions and Stipulations hereof, which the Insured shall sustain by reason of:

1. Any defect in or lien or encumbrance on the title to the estate or interest covered hereby in the land described or referred to in Schedule A, existing at the date hereof, not shown or referred to in Schedule B or excluded from coverage in Schedule B or in the Conditions and Stipulations; or

2. Lack of a right of access to and from the land; all subject, however, to the provisions of Schedules A and B and to the Conditions and Stipulations hereto annexed; all as of the date of this policy.

IN WITNESS WHEREOF, LOW-PREMIUM TITLE INSURANCE COMPANY has caused this policy to be signed and sealed as of the date of policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

Low-Premium Title Insurance Co.

By: Frank Worthmore, President.

(CORPORATE SEAL)

ATTEST:

Justin Overworked, Secretary.

Issued by:

BOOMTOWN ABSTRACT CO.

By: Simon Signatory
Authorized Agent

100 Insurance Avenue
Boomtown, Montana

IMPORTANT: This policy necessarily relates solely to the title as of the date of the policy. In order that a purchaser of the real estate described herein may be insured against defects, liens or encumbrances, this policy should be reissued in the name of such purchaser.

SCHEDULE A

Number	Date of Policy	Amount of Policy
1 23 45 6789	July 10, 1969 at 5:00 P.M.	$15,000.00

1. Name of Insured:
   Bryon B. Buyer and Bernice B. Buyer, husband and wife

2. The estate or interest in the land described or referred to in this schedule covered by this policy is:
FEE SIMPLE

3. Title to the estate or interest covered by this policy at the date hereof is vested in the Insured.

4. The land herein described is encumbered by the following mortgage or trust deed, and assignments:
None
and the mortgages or trust deeds, if any, shown in Schedule B hereof.

5. The land referred to in this policy is described as follows:
Lots 10 and 11 in Block 12 of the Value Addition to the City of Boomtown, County of Speculation, State of Montana.

SCHEDULE B

Policy Number 1 23 45 6789
Owners

This policy does not insure against loss or damage by reason of the following exceptions:

1. Rights or claims of parties in possession not shown by the public records.

2. Encroachments, overlaps, boundary line disputes, and any matters which would be disclosed by an accurate survey and inspection of the premises.

3. Easements or claims of easements not shown by the public records.

4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

5. Taxes or special assessments which are not shown as existing liens by the public records.

6. Rights of dower, homestead or other marital rights of the spouse, if any, of any individual insured.

7. The mortgage or trust deed, if any, shown as Item 4 of Schedule A.

8. Taxes subsequent to the year 1968.

9. Reservations contained in Patent, United States of America, to John Oldtimer, recorded in Book "U. S." Patents, page 73.

10. Uniform Commercial Code filings, if any, on or relating to fixtures and equipment in or about any improvements on said land.

11. That certain Montana Trust Indenture, Bryon B. Buyer and Bernice B. Buyer, Grantors, Trustworthy Savings and Loan Association, Trustee, and Donald D. Seller and Donna D. Seller, Beneficiary, dated July 10, 1969, and recorded July 10, 1969, in Book 100 of Mortgages at page 200, records of Speculation County, Montana.

Countersigned:

Simon Signatory
Authorized Signatory

CONDITIONS AND STIPULATIONS

1. Definition of Terms

The following terms when used in this policy mean:

(a) "land": the land described, specifically or by reference, in Schedule A and improvements affixed thereto which by law constitute real property;

(b) "public records": those records which impart constructive notice of matters relating to said land;

(c) "knowledge": actual knowledge, not constructive knowledge or notice which may be imputed to the Insured by reason of any public records; and

(d) "date": the effective date.

2. Exclusions from the Coverage of this Policy

This policy does not insure against loss or damage by reason of the following:

(a) The refusal of any person to purchase, lease or lend money on the estate or interest covered hereby in the land described in Schedule A.

(b) Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances), restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions, or location of any improvements now or hereafter erected on said land, or prohibiting a separation in ownership or a reduction in the dimensions or area of any lot or parcel of land.

(c) Governmental rights of police power or eminent domain unless notice of the exercise of such rights appears in the public records at the date hereof.

(d) Title to any property beyond the lines of the land expressly described or referred to in Schedule A, or title to areas within or rights or easements in any abutting streets, roads, avenues, lanes, ways or waterways (except to the extent the right of access to and from said land is covered by the insuring provisions of this policy), or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement, unless this policy specifically provides that such titles, rights or easements are insured.

(e) Defects, liens, encumbrances, adverse claims against the title as insured or other matters (1) created, suffered, assumed or agreed to by the Insured; or (2) known to the Insured either at the date of this policy or at the date such Insured acquired an estate or interest insured by this policy and not shown by the public records, unless disclosure thereof in writing by the Insured shall have been made to the Company prior to the date of this policy; or (3) resulting in no loss to the Insured; or (4) attaching or created subsequent to the date hereof.

(f) Loss or damage which would not have been sustained if the Insured were a purchaser for value without knowledge.

3. Defense and Prosecution of Actions—Notice of Claim to be Given by the Insured

(a) The Company, at its own cost and without undue delay, shall provide for the defense of the Insured in all litigation consisting of actions or proceedings commenced against the Insured, which litigation is founded upon a defect, lien or encumbrance insured against by this

policy, and may pursue such litigation to final determination in the court of last resort.

(b) In case any such action or proceeding shall be begun, or defense interposed, or in case knowledge shall come to the Insured of any claim of title or interest which is adverse to the title as insured, or which might cause loss or damage for which the Company shall or may be liable by virtue of this policy, the Insured shall notify the Company thereof in writing. If such notice shall not be given to the Company within ten days of the receipt of process or pleadings or if the Insured shall not, in writing, promptly notify the Company of any defect, lien or encumbrance insured against which shall come to the knowledge of the Insured, then all liability of the Company in regard to the subject matter of such action, proceeding or matter shall cease and terminate; provided, however, that failure to notify shall in no case prejudice the claim of any Insured unless the Company shall be actually prejudiced by such failure and then only to the extent of such prejudice.

(c) The Company shall have the right at its own cost to institute and prosecute any action or proceeding or do any other act which in its opinion may be necessary or desirable to establish the title as insured; and the Comanpy may take any appropriate action under the terms of this policy whether or not it shall be liable thereunder and shall not thereby concede liability or waive any provision of this policy.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the Insured shall secure to it the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit it to use, at its option, the name of the Insured for such purpose. Whenever requested by the Company the Insured shall give the Company all reasonable aid in any such action or proceeding, in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and the Company shall reimburse the Insured for any expense so incurred.

4. Notice of Loss—Limitation of Action

In addition to the notices required under paragraph 3(b), a statement in writing of any loss or damage for which it is claimed the Company is liable under this policy shall be furnished to the Company within sixty days after such loss or damage shall have been determined and no right of action shall accrue to the Insured under this policy until thirty days after such statement shall have been furnished, and no recovery shall be had by the Insured under this policy unless action shall be commenced thereon within five years after expiration of said thirty-day period. Failure to furnish such statement of loss or damage, or to commence such action within the time hereinbefore specified, shall be a conclusive bar against maintenance by the Insured of any action under this policy.

5. Option to Pay, Settle or Compromise Claims

The Company shall have the option to pay or settle or compromise for or in the name of the Insured any claim insured against or to pay the full amount of this policy and such payment or tender of payment, together with all costs, attorneys' fees and expenses which the Company is obligated hereunder to pay, shall terminate all liability of the Company hereunder.

6. Payment of Loss

(a) The liability of the Company under this policy shall in no case exceed, in all, the actual loss of the Insured and costs and attorneys' fees which the Company may be obligated hereunder to pay.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon the Insured in litigation carried on by the Company for the Insured, and all costs and attorneys' fees in litigation carried on by the Insured with the written authorization of the Company.

(c) No claim for damages shall arise or be maintainable under this policy (1) if the Company, after having received notice of an alleged defect, lien or encumbrance not excepted or excluded herein removes such defect, lien or encumbrance within a reasonable time after receipt of such notice; or (2) for liability voluntarily assumed by the Insured in settling any claim or suit without written consent of the Company.

(d) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto and no payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

(e) When liability has been definitely fixed in accordance with the conditions of this policy the loss or damage shall be payable within thirty days thereafter.

7. Liability Noncumulative

It is expressly understood that the amount of this policy is reduced by any amount the Company may pay under any policy insuring the validity or priority of any mortgage or deed of trust shown or referred to in Schedule B hereof or any mortgage or deed of trust hereafter executed by the Insured which is a charge or lien on the land described or referred to in Schedule A, and the amount so paid shall be deemed a payment to the Insured under this policy.

8. Co-insurance and Apportionment

(a) In the event that a partial loss occurs after the Insured makes an improvement subsequent to the date of this policy, and only in that event, the Insured becomes a co-insurer to the extent hereinafter set forth.

If the cost of the improvement exceeds twenty per centum of the amount of this policy, such proportion only of any partial loss established shall be borne by the Company as one hundred twenty per centum of the amount of this policy bears to the sum of the amount of this policy and the amount expended for the improvement. The foregoing provisions shall not apply to costs and attorneys' fees incurred by the Company in prosecuting or providing for the defense of actions or proceedings in behalf of the Insured pursuant to the terms of this policy or to costs imposed on the Insured in such actions or proceedings, and shall apply only to that portion of losses which exceed in the aggregate ten per cent of the face of the policy.

Provided, however, that the foregoing co-insurance provisions shall not apply to any loss arising out of a lien or encumbrance for a liquidated amount which existed on the date of this policy and was not shown in Schedule B, and provided further, such co-insurance provisions shall not apply to any loss if, at the time of the occurrence of such loss, the then value of the premises, as so improved, does not exceed one hundred twenty per centum of the amount of this policy.

(b) If the land described or referred to in Schedule A is divisible into separate and noncontiguous parcels, or if contiguous and such parcels are not used as one single site, and a loss is established affecting one or more of said parcels but not all, the loss shall be computed and

settled on a pro rata basis as if the face amount of this policy was divided pro rata as to the value of the date of this policy of each separate independent parcel to the whole, exclusive of any improvements made subsequent to the date of this policy, unless a liability or value has otherwise been agreed upon as to each such parcel by the Company and the Insured at the time of the issuance of this policy and shown by an express statement herein or by an endorsement attached hereto.

9. Subrogation upon Payment or Settlement

Whenever the Company shall have settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the Insured, and it shall be subrogated to and be entitled to all rights and remedies which the Insured would have had against any person or property in respect to such claim had this policy not been issued. If the payment does not cover the loss of the Insured, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss. If loss should result from any act of the Insured, such act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation. The Insured, if requested by the Company, shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect such right of subrogation, and shall permit the Company to use the name of the Insured in any transaction or litigation involving such rights or remedies.

10. Policy Entire Contract

Any action or actions or rights of action that the Insured may have or may bring against the Company arising out of the status of the title insured herein must be based on the provisions of this policy.

No provision or condition of this policy can be waived or changed except by writing endorsed hereon or attached hereto signed by the President, a Vice President, the Secretary, an Assistant Secretary or other validating officer of the Company.

11. Notices, Where Sent

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to its office at 111 West Washington Street, Chicago, Illinois 60602, or at any branch office shown hereon.

(Form provided courtesy of American Land Title Association as Standard Form A)

Management Agreement

EXAMPLE

In consideration of the covenants herein contained, _____ _____ (hereinafter called "Owner"), and _____ (hereinafter called "Agent"), agree as follows:

1. The Owner hereby employs the Agent exclusively to rent, lease, operate and manage the property known as _____ _____ upon the terms hereinafter set forth for the period of _____ beginning on the _____ day of _____, 19____, and ending on the _____ day of _____, 19_____, and thereafter until either party hereto shall notify the other by thirty (30) days' notice, in writing, of an intention to terminate the agreement, in which case this agreement shall terminate on the date stated in the notice.

2. The Agent accepts the employment and agrees:

a) To use diligence in the management of the premises for the period and upon the terms herein provided, and agrees to furnish the services of his/its organization for the renting, leasing, operating, and managing of the herein described premises.

b) To render monthly statements of receipts, expenses and charges and to remit to Owner receipts less disbursements. In the event the disbursements shall be in excess of the rents collected by the Agent, the Owner hereby agrees to pay such excess promptly upon demand of the Agent.

c) To deposit all receipts collected for Owner (less any sums properly deducted as otherwise provided herein) in a Trust Account, separate from Agent's personal account. However, Agent will not be held liable in event of a failure of the depository.

d) To maintain an up-to-date inventory of all personal property items of the Owner upon the premises.

e) That Agent's employees who handle or are responsible for Owner's monies shall be bonded by a fidelity bond in excess of any amount of such money that may come into their possession.

3. The Owner hereby gives to the Agent the following authority and powers and agrees to assume the expenses in connection therewith:

a) To advertise the availability for rental of the herein described premises or any part thereof, and to display signs thereon; to sign, renew and/or cancel leases for the premises or any part thereof; to collect rents due or to become due and give receipts therefor; to terminate tenancies and to sign and serve in the name of the Owner such notices as are deemed needful by Agent; to institute and prosecute actions, to evict tenants and to recover possession of said premises; to sue for in the name of the Owner and recover rents and other sums due; and when expedient, to settle, compromise, and release such actions or suits or reinstate such tenancies.

b) To make or cause to be made and supervise repairs and alterations, and to do decorating on said premises; to purchase supplies and pay all bills. The Agent agrees to secure the approval of the Owner on all expenditures in excess of $ _____ for any one item, except monthly or recurring operating charges and/or emergency repairs in excess of the maximum, if in the opinion of the Agent such repairs are necessary to protect the property from damage or to maintain services to the tenants as called for by their tenancy.

c) To hire, discharge and supervise all labor and employees required for the operation and maintenance of the premises; it being agreed that all employees shall be deemed employees of the Owner and not the Agent, and that the Agent may perform any of its duties through its attorneys, agents or employees and shall not be responsible for their acts, defaults or negligence if reasonable care has been exercised in their appointment and retention. The Agent shall not be liable for any error of judgment or for any mistake of fact of law, or for anything which it may do or refrain from doing hereafter, except in cases of wilful misconduct or gross negligence.

d) To make contracts for electricity, gas, fuel, water, telephone, window cleaning, ash or rubbish hauling and other services or such of them as the Agent shall deem advisable; the Owner to assume the obligation of any contract so entered into at the termination of this agreement.

4. The Owner further agrees:

a) To save the Agent harmless from all damage suits in connection with the management of the herein described property and from liability from injury suffered by any employee or other person whomsoever, and to carry, at his own expense, necessary public liability and workmen's compensation insurance adequate to protect the interests of the parties hereto, which policies shall be so written as to protect the Agent in the same manner and to the same extent they protect the Owner.

b) To advise the Agent, in writing, if payment of mortgage indebtedness, property or employee taxes or special assessments, or the placing of fire, liability, steam boiler, pressure vessel or any other insurance is desired.

c) Upon and after the termination of this agreement pursuant to the method described in Paragraph 1 hereof, Owner shall recognize Agent as the broker in any pending negotiations for the leasing of said premises, or any part thereof, and in the event of the consummation thereof Owner shall pay to Agent a commission therefor at the rate prescribed in Paragraph 4, Subsection 2 hereof.

d) To pay the Agent each month:

(1) For Management: _____

(2) For Leasing: _____

(3) Other: _____

_____

_____

_____

_____

_____

_____

_____

This Agreement shall be binding upon the successors and assigns of the Agent, and the heirs, administrators, executors, successors and assigns of the Owner.

IN WITNESS WHEREOF, the parties hereto have affixed or caused to be affixed their respective signatures this _____ day of _____, 19 ____.

WITNESS:

_____ _____
Owner

_____ _____
Agent

Bond for Real Estate Broker and/or Real Estate Broker's Salesman

MONTANA REAL ESTATE COMMISSION

KNOW ALL MEN BY THESE PRESENTS: BOND NO. _____

That we _____ of _____, in the county of _____, State of Montana, as Principal, and _____, a corporation, duly organized under the laws of the State of _____, having its principal place of business in the City of _____, State of _____, and licensed to do business under the laws of the State of Montana, as Surety, are held and firmly bound unto the Montana Real Estate Commission in the full penal sum of TEN THOUSAND DOLLARS ($10,000.00), truly to be made, we bind ourselves and our legal representatives, jointly and severally, by these presents.

Sealed with our Seals and dated this _____ day of _____, 19 _____.

WHEREAS, the above bound principal in compliance with the provisions of Title 66, Chapter 19, Revised Codes of Montana, 1947, as amended, and the rules and regulations promulgated by the Montana Real Estate Commission, is about to engage or continue in the business of a real estate broker and/or real estate broker's salesman.

NOW, THEREFORE, if the said principal, if and when licensed, in accordance with the provisions of the "Real Estate License Act of 1963" of the State of Montana and as amended, shall conduct his business and himself in accordance with the provisions of said act and shall pay to the extent of TEN THOUSAND DOLLARS ($10,000.00) all Judgments recovered against him for loss or damage to any individual, partnership, association or corporation arising in the course of the principal's practice as a licensed real estate broker or salesman, then this obligation to be void, otherwise to remain in full force and effect.

The aggregate liability of the surety hereunder, whether to one or more persons, shall in no event exceed the total sum of TEN THOUSAND DOLLARS ($10,000.00).

This bond shall be in full force and effect from the _____ day of _____, 19 _____, and continuously thereafter for each successive licensed year until cancelled as provided herein.

The surety's liability under this bond shall not be cumulative, regardless of the number of years this bond is continued in force and the surety's aggregate liability during effective period of this bond shall not in any event exceed the penal sum of TEN THOUSAND DOLLARS ($10,000.00).

The surety may cancel this bond as to future liability by giving thirty (30) days' written notice by registered mail addressed to the principal at the address in this bond stated, and to the Montana Real Estate Commission. If the principal does not execute and have approved a new bond prior to the effective date of such cancellation by the surety, his

license will be automatically suspended by operation of law and principal shall immediately return his license and identification card to the Montana Real Estate Commission. If at any time during the term hereof the principal furnishes a new bond accepted by the Commission this bond shall be cancelled as of the date of said approval. The surety shall remain liable, however, subject to all the terms, conditions and provisions of this bond, for any and all acts covered by this bond up to the date of such cancellation.

IN WITNESS WHEREOF, The said principal has hereunto set his hand and seal, and the said surety has caused these presents to be signed by its duly authorized officers and its corporate seal to be hereunto affixed the day and year first above written.

COUNTERSIGNED	Principal
Resident Agent	Surety
Address	Attorney-in-Fact

Application for Broker or Salesman License

PLEASE CHECK ONE: Broker _____ Salesman _____

1. Full name of applicant _____
   First Middle Last
2. Residence address _____
   Street City State Zip Code
3. Residence telephone _____
4. Business address _____
   Street City State Zip Code
5. Business telephone _____
6. Place of birth _____
7. Date of birth _____
8. Have you ever taken the Montana Real Estate Examination before? _____ If your answer is yes, please give the dates of examination. _____
9. Are you a citizen of the United States? _____
10. State previous experience in the real estate business as a broker or salesman, including time and place of such experience. _____
    _____
11. Do you possess a real estate license in any state at the present time? _____. If the answer is yes, please list the state or states where you are licensed _____
12. Will your time be devoted exclusively to the real estate business? _____ If not, in what other business will you engage? _____
    _____
13. Marital Status: Married _____ Single _____ Divorced _____
14. Maiden name (if applicable) _____

ATTACH
PHOTOGRAPH
HERE

NAME: _____
First Middle Last

15. Have you ever been convicted of or are you now under indictment for forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, a crime of moral terpitude, or other criminal offense or offenses? _____ ; if so explain fully:
    _____
    _____
    _____

16. Have you ever been disbarred from the practice of law? _____

17. Do you now have any suits pending? _____ Have any judgments been filed against you? _____ If your answer is "Yes" to either question explain fully: _____

_____

_____

18. Have you ever been bonded? _____ by what Company? _____

_____

Was any loss ever paid on any bond covering you? _____ If so, give details _____

_____

_____

19. Have you ever been refused a bond? _____ If so, state the circumstances. _____

_____

20. Have you ever been refused any occupational or professional license? _____ If so, explain _____

_____

_____

21. Have you ever been refused a real estate broker's or salesman's license in this or any other state? _____ If "Yes," explain _____

_____

_____

22. Has a real estate broker or salesman license issued in your name ever been suspended, or revoked? _____ If so, explain fully

_____

_____

23. Have you ever used any name other than the one herein given, either surname, given name, or initials? _____ If "Yes," explain _____

_____

_____

24. Have you or your spouse ever petitioned for bankruptcy or been adjudged a bankrupt? _____ If "Yes," explain _____

_____

_____

25. State experience during the immediate preceding five years, giving the various employments in order.

Occupation	From	To	Employer and Address
_____	19	19	_____
_____	19	19	_____
_____	19	19	_____

_____	19	19	_____
_____	19	19	_____
_____	19	19	_____

26. List of grade and high schools attended:

Name of School	Address	Years Attended	Year Graduated
_____	_____	19 to 19	_____
_____	_____	19 to 19	_____
_____	_____	19 to 19	_____
_____	_____	19 to 19	_____

27. List education above high school:

School or College	Address	Years Attended	Year Graduated
_____	_____	19 to 19	_____
_____	_____	19 to 19	_____
_____	_____	19 to 19	_____
_____	_____	19 to 19	_____

28. Give names and address of three (3) people engaged in business who may be used as character references. PLEASE PRINT.

Name	Street Address	City	State	Zip Code

29. Give names and addresses of three (3) credit references where you have done business in the past three years. PLEASE PRINT.

Name	Street Address	City	State	Zip Code

30. If a real estate broker's or salesman's license is issued to you, do you agree to conduct your real estate business in accordance with the laws of this State and rules and regulations of the Montana Real Estate Commission to the extent of your knowledge and ability? _____

STATE OF MONTANA }
County of _____ } ss. , being first duly sworn, deposes and says:

That __ he is the person who executed the foregoing application; that __ he has carefully read the same, knows the contents thereof, and that the same is true of h___ own knowledge.

_____
(Applicant's Signature)

Subscribed and sworn to before me this _____ day of _____, 19_____.

_____
Notary Public for the State of Montana
(SEAL) Residing at _____.
My Commission expires _____.

ATTACH COPY OF HIGH SCHOOL DIPLOMA
OR
OFFICIAL HIGH SCHOOL TRANSCRIPT

CREDIT AND CHARACTER REPORT BY EMPLOYING BROKER

To accompany each application for a salesman's license

NAME OF BROKER _____
BUSINESS NAME _____
BUSINESS ADDRESS _____
Street City State Zip Code

I desire to employ _____ as a real estate salesman.

I hereby state that the above named applicant for a real estate salesman's license has satisfactory credit and character. This statement is based upon:

_____(a) Independent investigation
_____(b) Personal acquaintance with the applicant
_____(c) Statements made by the applicant upon which I rely
_____(d) Credit and character report from Credit Bureau

I further understand that should the above named applicant become a licensed salesman, the full responsibility for this salesman shall rest with me. I further agree that I will actively supervise and train the applicant during the term of his employment.

Employing broker should include here any additional information about the applicant which he thinks will be of interest to the Commission in considering the application.

_____
_____
_____

STATE OF MONTANA }
County of _____ } ss.

_____, being first duly sworn deposes and says:

That ___ he is the person who executed the foregoing report; that ___ he has carefully read the same, knows the contents thereof, and that the same is true of h___ own knowledge.

_____
(Broker's Signature)

Subscribed and sworn to before me this _____ day of _____, 19_____.

_____
Notary Public for the State of Montana
Residing at _____.
My Commission expires _____.

(SEAL)

Section XXIV

Sample Arithmetic Problems

The following simple problems in arithmetic will give you some indication of the type of problems to be found in the licensing examinations. There are hundreds of practical problems in mathematics that can be offered, so a student preparing for the examination should not expect the following samples to cover all possible challenges that will be met in the examination.

1. The Central Multi-listing Exchange lists a parcel of real property with a selling commission of 6%, and is to receive 5% of the commission for its listing service. Broker Jones presented the listing to the Exchange and Broker Smith sold the property to Johnson for $20,000.00. As mutually agreed, the listing broker received 25% of the balance of the commission and the selling broker received the remaining 75%. What commissions did Jones and Smith receive?

Selling price	$20,000	
Commission	.06	
	$1,200.00	Total commission
Listing Com.	.05	
	$60.00	Multi-Listing Exchange

Total Commission	$1,200.00	
	—60.00	
	$1,140.00	remaining commission
	.25	Broker Jones' share
	$ 285.00	Broker Jones' share commission

$ 1,140.00	
$ —285.00	
$ 855.00	Broker Smith's share commission

2. A parcel of land is sold for $10,000.00 upon an installment contract that requires monthly payments of $80.00 plus interest at 6% per annum payable monthly. What would be the total payment for the first, second and third months?

Principal	$10,000	
	.005	
	$ 50.00	Interest 1st month
	$ 80.00	regular payment
	$130.00	Total payment, 1st month
2nd mo.	$10,000	Principal
	$ 80	payment on principal
	$ 9,920	
	.005	
	$ 49.65	Interest 2nd month
	$ 80.00	
	$129.65	Total payment, 2nd month
3rd mo.	$ 9,920	
	$ 80	payment on principal
	$ 9,840	
	.005	
	$ 49.20	Interest 3rd month
	$ 80.00	
	$129.20	Total payment, 3rd month

3. A broker obtains a three-year lease upon property listed with him for leasing. The lease commences July 1, 1964 and provides for a monthly rental of $200.00. The broker's commission by agreement is one-half of the first month's rent and 5% of the monthly rental thereafter. The listing agreement further provides that if the property is sold during the three-year term, the broker is to receive 3% of the anticipated monthly rentals for the remainder of the term to be paid at the time of sale. The property is sold on March 1, 1965. What is the broker's total commission?

July, 1964	$100.00	$200 \times 5\% = \$10.00$ mo.
August, 1964 through February, 1965	70.00	$200 \times 3\% = \$ 6.00$ mo.
Remaining 28 months at $6.00	168.00	
	$338.00	Total Commission

4. A parcel of real property appraised at $16,000.00 has been insured against fire by the owner at 80% of its total value, taking into account that 20% represents the value of the land. The annual fire insurance rate on the dwelling is $3.50 per $1,000.00 but the owner may purchase the policy for 3 years at 2½ times the single-year premium. How much can the owner save by paying the premium for three years in advance?

$16,000
.80
$12,800.00 Total insured value

12.8
3.50

$44.80 annual premium
×2½

$112.00—3 yr. premium
$44.80 × 3 = $134.40—premium for 3 yr. on annual basis
—112.00

$ 22.40—saving by paying in advance

5. Hazel Homeowner borrows $12,000 upon a promissory note requiring interest payments at $210.00 quarterly on the full amount. What interest rate is Hazel paying?

$210.00 × 4 = $840.00 annual interest
.07
12,000 / 84000. 7% annual interest rate

6. Loan Agency X has agreed to loan up to 75% of the appraised value of a parcel of property. If the interest rate is 6½% and the first semi-annually interest payment is $200.00, what is the appraised value of the property?

$200.00 semi-annual equals $400.00 annual interest at 6½%

6153.846 or $6,153.85 is 75% appraised value

.065 / 400000.000

390

100
65

350
325

250
195

550
520

300
260

400
390

8205.133 or $8,205.13
.75/6153.85.000 Appraised
600 Value

153
150

3 85
3 75

100
75

250
225

250
225

25

7. Jim Broker has an agreement with Jack Salesman, who is working for him, to split all commissions on sales made by Jack 50-50. Jack sells a 1,000 acre ranch at $40.00 per acre. The listing agreement provides for a 6% commission on the first $10,000.00 of the purchase price, a 4% commission on the next $10,000.00 of the purchase price, and a 2% commission on the balance of the purchase price. Jack is obligated to pay 10% of his share of the commission to Paul, another salesman who listed the property. What is the amount of Jack Salesman's share of the commission?

$40,000 total selling price

1st $10,000	$ 600.00
2nd $10,000	400.00
20,000	400.00
	$1,400.00 Total Commission

Jim Broker $700.00

Jack Salesman $700.00 less 10% or $70.00 leaving balance to Jack Salesman of $630.00

8. Ima Investor borrows $10,000.00, executing a mortgage upon certain of her real estate to secure a loan. The prom-

issory note calls for interest at 7% per annum. Her taxes and insurance are $240.00 per year. Her monthly payment is $95.00, inclusive of principal, interest, reserve for taxes and reserve for insurance. What is the balance of the principal which she owes after making her first monthly payment?

$10,000 × 7% = $700.00 per year interest
$700 ÷ 12 equals $58.33 per month interest

$95.00	monthly payment less	$20.00	taxes and insurance
20.00			
$75.00	less $58.33 interest		
58.33		$10,000.00	
$16.67	paid on principal	16.67	
		$ 9,983.33	Balance due on principal

9. A commercial building is sold upon an installment contract for sale at a price of $60,000.00. Of this amount, $5,000.00 is paid down at the time of sale and the contract provides for monthly payments of not less than $300.00, plus interest. The contract is dated April 15, 1965, and the first principal payment is due May 1, 1965. If the buyer makes each monthly installment in the amount of exactly $300.00 upon the principal, when will the contract be paid in full?

$60,000.00
5,000.00 down payment

$55,000.00 Balance of purchase price
183.33 months to pay or 184 months

```
300/55000.00
   300
   ---
   2500
   2400
   ----
    1000
     900
     ---
     100 0
      90 0
      ----
      10 00
       9 00
       ----
```

184 ÷ 12 = 15 yr. 4 mo. on contract
1st payment May 1, 1965
15 yr.
180th payment May 1, 1980
Final payment Sept. 1, 1980 for $100.00

10. If a broker sells a lot measuring 75 feet on the street and 150 deep at a price of 12¢ per square foot, and the purchaser assumes paving lien of $3.00 per front foot, what total price would the purchaser then have to ask for the property if he expects to resell at a profit of $200.00, giving clear title to the property?

75 × 150 = 3750
3750 × 75 = 11250 sq. ft.
11250 sq. ft. × .12 per sq. ft. = 22500 / 11250

75 × $3.00 = $225.00 paving lien

$1350.00	Purchase price
225.00	Paving lien
200.00	Profit
$1775.00	Selling price

11. If a $10,000.00 hazard insurance policy dated July 1, 1964, was issued for three years at a premium of $148.00, and the insured property was sold January 15, 1965, under a contract to prorate insurance as of the date of sale, what would be the value of the unused portion of the policy for which the seller would receive credit?

4.11 1/9 monthly premium
36/148.00

6½ months of 36 months used up.
Bal. of 29½ months at $4.11 1/9 a month.

$\frac{7400}{18} \times \frac{531}{18} = \frac{3929400}{324}$

$121.28
324/39294.00

$121.28 value of unused portion credited to seller.

12. A parcel of property has a true market value of $20,000.00. If the property is assessed at 40% of its true value and taxed at 30% of its assessed value, what would be the total yearly tax rate of 110 mills?

20,000
.40

$8,000.00 assessed value
.30

$2,400.00 taxable value
.110

2400000
240000

$264.00 yearly tax

13. Buyer B purchased improved real estate for $15,000.00 and of this price it was estimated that $13,000.00 represented the value of the house upon the lot and $2,000.00 represented the value of the lot. B held the property for ten years, during which time an appraiser determined that B suffered an annual depreciation of 2½% on the house and an annual increase of 8% on the lot. What would be the value of the property at the end of the ten year period?

Depreciation 10 yr. @ 2½% or total depreciation 25%

$13,000
.25

65000
26000

$3,250.00 depreciation

$13,000.00
3,250.00

$9,750.00 value house

Increase or appreciation on lot 10 yr. @ 8% or 80%

$2,000
.80

$1,600.00 appreciation

$2,000.00
1,600.00

$3,600.00 value lot

$ 9,750.00
3,600.00

$13,350.00 present value lot and house.

14. Mortimer Moneybags purchased a $65,000.00 home, assuming an existing mortgage which has a balance of $15,000.00 at the time of sale and which draws 5½% interest per annum. The sale takes place on February 15, 1965, and the interest has been paid up to January 1, 1965, the date of the last payment on the principal and interest by the seller. Adjust the purchase price to account for the interest upon the existing mortgage and state whether this item is a debit or a credit to the buyer.

$15,000.00
.05½

7,500 00
75 000 00

82 5 00 00 $825 annual interest ÷ 12 or $68.75 a mo.
68.75 1 month interest
34.38 ½ month interest

$103.13 interest due
$65,000.00
15,103.13—principal and interest on mortgage

$49,996.87—Balance due on purchase price

Interest due is a credit to the buyer.

15. Mr. Johnson received $9,200.00 from his real estate broker upon sale of certain of his real property after the broker had deducted a sales commission of 6% and other costs which were the obligation of the seller in the amount of $120.00. What was the gross selling price of the property?

let x = gross selling price,
therefore, .06x = commission
x − .06x − $120 = $9,200.00
.94x = $9,320
x = $9,914.89

16. Byron Buyer purchased a parcel of commercial property measuring 150 feet by 150 feet and is constructing a building thereon which measures 40 feet by 40 feet, at an average height, including basement, of 30 feet; his costs are 35¢ per cubic foot for the building and $25.00 per front foot for the land. What will be his total cost for land and construction?

40 × 40 × 30 = 48,000 cu. ft. @ 35¢ or $16,800.00
(Cost of Building)
150 × $25 = $ 3,750.00
(Cost of land)
Total cost $20,550.00

17. Wilson owns a block in the city containing 30 lots, each lot with a frontage of 25 feet. Triple A zoning restrictions require that only residences can be constructed and that building sites have a frontage of 75 feet. Wilson desires to retain one building site for himself and desires to realize $25,000.00 from the sale of the balance of the block. What must be the selling price per front foot of the lots sold and the price for each building site?

30 × 25 = 750 front feet
750
75 (his lot)
675 front feet for sale

$37.037 per front foot
675/25,000.00
20 25
4 750
4,725
25 00
20 25
4 750
4 725

$37.037
75
185185
259259
$2777.775 or $2,777.78 per site

18. A parcel of ground containing 100 acres of rural property is subdivided into building sites. The streets require one-eighth of the entire parcel and the balance is divided into 120 lots of equal size. How many square feet are there in each lot?

1 acre equals 43,560 square feet
100 acres equals 4,356,000 square feet
8/4,356,000 or 544,500 square feet for streets
544,500
3,811,500 square feet for lots

```
      31,762.5 sq. ft. each lot
120/3,811,500.0
   3 60
   ----
    211
    120
    ---
     91 5
     84 0
     ----
      7 50
      7 20          31,762.5 sq. ft. each lot
      ----
       300
       240
       ---
        60 0
        60 0
        ----
```

19. I. M. Short executed a promissory note and mortgage encumbering certain of his real property for a loan of $10,000.00 at an interest rate of 6½% per annum. Taxes and insurance payments total $138.00 per annum and his monthly payments upon the principal and interest total $70.00. What is his principal balance after he pays the first monthly installment?

$10,000 × 6½% = $650.00 annual interest
650 ÷ 12 = $54.166 or $54.17 monthly interest
$70.00 payment including interest
54.17 interest

$15.83 paid on principal

$10,000.00
15.83

$ 9,984.17 balance on principal

20. $12\frac{5}{8} \div 3\frac{1}{8} = ?$

$$\frac{101}{8} \div \frac{25}{8} = \frac{101}{8} \times \frac{8}{25} = \frac{101}{25} = 4\,\frac{1}{25}$$

Section XXV

Rules of the Montana Real Estate Commission

The following fees are required by the Montana Real Estate Commission for each of the licensing services listed below. All fees are subject to change by the Commission within the limitations provided in Section 66-1934, Revised Codes of Montana, 1947, and without notice.

MONTANA REAL ESTATE LICENSE FEES

1. For each examination, a fee $20.00
2. For each original resident broker's license issued, a fee 25.00
3. For each annual renewal of a resident broker's license, a fee 25.00
4. For each original nonresident broker's license issued, a fee 40.00
5. For each annual renewal of a nonresident broker's license, a fee 40.00
6. For each original salesman's license issued, a fee 20.00
7. For each annual renewal of a salesman's license, a fee 20.00
8. For each additional office or place of business, an annual fee 15.00
9. For each change of place of business or change of employer or contractual associate, a fee 5.00
10. For each duplicate license, where the original license is lost or destroyed and affidavit is made thereof, a fee 5.00
11. For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made thereof, a fee 5.00

Section XXVI

Montana Statutes

The following statutes are provided for the reader's benefit because they are related, in one manner or another, to the various real estate transactions that may be undertaken by both the real estate broker and salesman. These statutes are not offered either as a complete listing, nor as a course in real estate law—any questions that do arise should be answered by your attorney. These statutes are listed to alert the broker or salesman to some of the serious legal complications that are involved in the real estate practice and their consequences. An attempt has been made to provide the latest law and amendments, but no representation is made that the following are complete, or that later amendments may have brought about further changes.

AGENCY

Definition of Agency—Authority of Agents

Section 2-101. Agency defined.
2-102. Who may appoint, and who may be an agent.
2-103. Agents, general or special.
2-104. Agency, actual or ostensible.
2-105. Actual agency.
2-106. Ostensible agency.
2-107. What authority may be conferred.
2-108. Agent may perform acts required of principal by code.
2-109. Agent to conform to his authority.
2-110. Must keep his principal informed.
2-111. Collecting agent.
2-112. Responsibility of subagent.
2-113. Agent cannot have authority to defraud principal.
2-114. Creation of agency.
2-115. Consideration unnecessary.
2-116. Form of authority.
2-117. Ratification of agent's act.
2-118. Ratification of part of a transaction.
2-119. When ratification void.
2-120. Ratification not to work injury to third persons.
2-121. Rescission of ratification.
2-122. Measure of agent's authority.
2-123. Actual authority defined.
2-124. Ostensible authority defined.
2-125. Agent's authority as to persons having notice of restrictions upon it.
2-126. Agent's necessary authority.
2-127. Agent's power to disobey instructions.
2-128. Authority construed by its specific rather than by its general terms.
2-129. Exceptions to general authority.
2-130. What included in authority to sell personal property.
2-131. What included in authority to sell real property.
2-132. Authority of general agent to receive price of property.
2-133. Authority of special agent to receive price.

2-101. **Agency defined.** An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

2-102. **Who may appoint, and who may be an agent.** Any person having capacity to contract may appoint an agent, and any person may be an agent.

2-103. **Agents, general or special.** An agent for a particular act or transaction is called a special agent. All others are general agents.

2-104. **Agency, actual or ostensible.** An agency is either actual or ostensible.

2-105. **Actual agency.** An agency is actual when the agent is really employed by the principal.

2-106. **Ostensible agency.** An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

2-107. **What authority may be conferred.** An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

2-108. **Agent may perform acts required of principal by code.** Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

2-109. **Agent to conform to his authority.** An agent must not exceed the limits of his actual authority, as defined by the chapters on agency.

2-110. **Must keep his principal informed.** An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

2-111. **Collecting agent.** An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor; and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

2-112. **Responsibility of subagent.** A mere agent of an agent is not responsible as such to the principal of the latter.

2-113. **Agent cannot have authority to defraud principal.** An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal.

2-114. **Creation of agency.** An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

2-115. **Consideration unnecessary.** A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

2-116. **Form of authority.** An oral authorization is sufficient for any purpose except that an authority to enter into a contract required by law to be writing can only be given by an instrument in writing.

2-117. **Ratification of agent's act.** A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or restraining the benefit of the act, with notice thereof.

2-118. **Ratification of part of a transaction.** Ratification of part of an indivisible transaction is a ratification of the whole.

2-119. **When ratification void.** A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

2-120. **Ratification not to work injury to third persons.** No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

2-121. **Rescission of ratification.** A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

2-122. **Measure of agent's authority.** An agent has such authority as the principal actually or ostensibly confers upon him.

2-123. **Actual authority defined.** Actual authority is such as the principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

2-124. **Ostensible authority defined.** Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

2-125. **Agent's authority as to persons having notice of restrictions upon it.** Every agent has actually such authority as is defined by sections 2-101 to 2-407 of this code, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

2-126. **Agent's necessary authority.** An agent has authority:

1. To do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

2-127. **Agent's power to disobey instructions.** An agent has power to disobey instructions in dealing with the subject of the agency in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

2-128. **Authority construed by its specific rather than by its general terms.** When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

2-129. **Exceptions to general authority.** An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so;

2. To define the scope of his agency; or,

3. To do any act which a trustee is forbidden to do by sections 86-301 to 86-312 of this code.

2-130. **What included in authority to sell personal property.** An authority to sell personal property includes authority to warrant the title of the principal, and the quantity and quality of the property.

2-131. **What included in authority to sell real property.** An authority to sell and convey real property includes authority to give the usual covenants of warranty.

2-132. **Authority of general agent to receive price of property.** A general agent to sell, who is entrusted by the principal with the possession of the thing sold, has authority to receive the price.

2-133. **Authority of special agent to receive price.** A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS

Section 2-201. Principal—how affected by acts of agent within the scope of his authority.
2-202. Principal—when bound by incomplete execution of authority.
2-203. Notice to agent—when notice to principal.
2-204. Obligation of principal when agent exceeds his authority.
2-205. For acts done under a mere ostensible authority.
2-206. When exclusive credit is given to agent.
2-207. Rights of person who deals with agent without knowledge of agency.
2-208. Instrument intended to bind principal does bind him.
2-209. Principal's responsibility for agent's negligence or omission.
2-210. Principal's responsibility for wrongs wilfully committed by agent.
2-111. Warranty of authority.
2-212. Agent's responsibility to third persons.
2-213. Obligation of agent to surrender to third person property received for principal.
2-214. Agent not having capacity to contract.

2-201. **Principal—how affected by acts of agent within the scope of his authority.** An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions without such limit, if they had been entered into on his own account, accrue to the principal.

2-202. **Principal—when bound by incomplete execution of authority.** A principal is bound by an incomplete execution of an authority when it is consistent with the whole purpose and scope thereof, but not otherwise.

2-203. **Notice to agent—when notice to principal.** As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

2-204. **Obligation of principal when agent exceeds his authority.** When an agent exceeds his authority, his principal is bound by his authorized acts so far as they can be plainly separated from those which are unauthorized.

2-205. **For acts done under a mere ostensible authority.** A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability or parted with value upon the faith thereof.

2-206. **When exclusive credit is given to agent.** If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

2-207. **Rights of person who deals with agent without knowledge of agency.** One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

2-208. **Instrument intended to bind principal does bind him.** An instrument within the scope of his authority, by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself.

2-209. **Principal's responsibility for agent's negligence or omission.** Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his wilful omission to fulfill the obligations of the principal.

2-210. **Principal's responsibility for wrongs wilfully committed by agent.** A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

2-211. **Warranty of authority.** One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

2-212. **Agent's responsibility to third persons.** One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no other:

1. When, with his consent, credit is given to him personally in a transaction;

2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or

3. When his acts are wrongful in their nature.

2-213. **Obligation of agent to surrender to third person property received for principal.** If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control, at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice to the owner, he delivers it to his principal.

2-214. **Agent not having capacity to contract.** The provisions of the three preceding sections are subject to the provisions of sections 64-101 to 64-114 of this code.

DELEGATION AND TERMINATION OF AGENCY

Section 2-301. Agent's delegation of powers.
2-302. Agent's unauthorized employment of subagent.
2-303. Subagent, rightfully appointed, represents principal.
2-304. Termination of agency.
2-305. Same—where coupled with an interest.

2-301. **Agent's delegation of powers.** An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical;

2. When it is such as the agent cannot himself, and the subagent can, lawfully perform;

3. When it is the usage of the place to delegate such powers; or,

4. When such delegation is specially authorized by the principal.

2-302. **Agent's unauthorized employment of subagent.** If an agent employs a subagent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

2-303. **Subagent, rightfully appointed, represents principal.** A subagent, lawfully appointed, represents the principal in like manner with the original agent, and the original agent is not responsible to third persons for the acts of the subagent.

2-304. **Termination of agency.** An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term;

2. The extinction of its subject;

3. The death of the agent;

4. His renunciation of the agency; or,

5. The incapacity of the agent to act as such.

2-305. **Same—where coupled with an interest.** Unless the power of the agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by:

1. Its revocation by the principal;

2. His death; or,

3. His incapacity to contract.

FACTORS

Section 2-401. Factor defined.
2-402. Obedience required from factor.
2-403. Sales on credit.
2-404. Liability of factor under guaranty commission.
2-405. Factor cannot relieve himself from liability.
2-406. Actual authority of factor.
2-407. Ostensible authority.

2-401. **Factor defined.** A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

2-402. **Obedience required from factor.** A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price he may, nevertheless, sell for his reimbursement after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledge.

2-403. **Sales on credit.** A factor may sell property consigned to him on such credit as is usual; but, having once agreed with the purchaser upon the terms of credit, may not extend it.

2-404. **Liability of factor under guaranty commission.** A factor who charges his principal with a guaranty commission upon a sale thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchasor; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

2-405. **Factor cannot relieve himself from liability.** A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal.

2-406. **Actual authority of factor.** In addition to the authority of agents in general, a factor has actual authority for his principal, unless specially restricted:

1. To insure property consigned to him uninsured;

2. To sell, on credit, anything entrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,

3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

2-407. **Ostensible authority.** A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

CITIES AND TOWNS

Plats of Cities and Towns and Additions Thereto

Section 11-614. Small and irregularly shaped tracts must be platted, surveyed and certified before sale.

11-614. **Small and irregularly shaped tracts must be platted, surveyed and certified before sale.** Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as orchard tracts, vineyard tracts, acreage tracts, suburban tracts, or community tracts, containing less than the United States legal subdivision of ten (10) acres, or who shall subdivide and/or sell or transfer any irregularly shaped tract of land, the acreage of which cannot be determined without a survey, must cause the same to be surveyed, platted, certified, and filed in the office of the county clerk and recorder of the county in which said land lies, according to the provisions of this chapter before any part or portion of the same is sold or transferred; except that it will not be necessary to comply with the provisions of this chapter relating to parks and playgrounds, and such sales or transfers must be made by reference to the plat on file and the numbers of the lots and blocks. It is unlawful for any further sales to be made without a full compliance with the provisions of this chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat; provided further that until the filing of such plat, or survey, the county clerk of any county shall not record any deed which conveyed, or purports to convey, any irregular shaped tract or part of land or parcel of any such platted tract or tracts of less than the United States legal subdivision of ten (10) acres, unless the person presenting such deed for record also delivers to such county clerk for filing a plat or map which has been prepared by a surveyor or civil engineer, which plat or map shall show with particularity the legal description, and area of the land to be conveyed, except that no map or plat shall be required in those cases where the parcel of land being conveyed has been previously conveyed by deed or other instrument recorded ten (10) years or more prior to the passage of this act.

CONTRACTS

Definitions and Essentials of Contract

Section 13-101. Contract defined.
13-102. Essential elements of contract.

13-101. **Contract defined.** A contract is an agreement to do or not to do a certain thing.

13-102. **Essential elements of contract.** It is essential to the existence of a contract that there should be:

1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and
4. A sufficient cause or consideration.

PARTIES TO CONTRACT

Section 13-201. Who may contract.
13-202. Minors and persons of unsound mind, capacity to contract.
13-203. Identification of parties necessary.
13-204. When contract for benefit of third person may be enforced.

13-201. **Who may contract.** All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

13-202. **Minors and persons of unsound mind, capacity to contract.** Minors and persons of unsound mind have only such capacity as is defined by sections 64-101 to 64-114 of this code.

13-203. **Identification of parties necessary.** It is essential to the validity of a contract not only that the parties should exist, but that it should be possible to identify them.

13-204. **When contract for benefit of third person may be enforced.** A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

CONSENT

Section 13-301. Essentials of consent.
13-302. Consent—when voidable.
13-303. Apparent consent—when not free.
13-304. When deemed to have been obtained by fraud, etc.
13-305. Duress—in what it consists.
13-306. Menace—in what it consists.
13-307. Fraud, actual or constructive.
13-308. Actual fraud, acts constituting.
13-309. Constructive fraud.
13-310. Actual fraud, a question of fact.
13-311. Undue influence—in what it consists.
13-312. Mistake, kinds of.
13-313. Mistake of fact.
13-314. Mistake of law.
13-315. Mistake of foreign laws.
13-316. Mutuality of consent.
13-317. Communication of consent.
13-318. Mode of communicating acceptance of proposal.
13-319. When communication deemed complete.
13-320. Acceptance by performance of conditions.
13-321. Acceptance must be absolute.
13-322. Revocation of proposal.
13-323. Revocation—how made.
13-324. Ratification of contract void for want of consent.
13-325. Assumption of obligation by acceptance of benefits.

13-301. **Essentials of consent.** The consent of the parties to a contract must be:

1. Free;

2. Mutual; and,

3. Communicated by each to the other.

13-302. **Consent—when voidable.** A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties in the manner prescribed by the chapter on rescission.

13-303. **Apparent consent—when not free.** An apparent consent is not real or free when obtained through:

1. Duress;

2. Menace;

3. Fraud;

4. Undue influence; or,

5. Mistake.

13-304. **When deemed to have been obtained by fraud, etc.** Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed.

13-305. **Duress—in what it consists.** Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;

2. Unlawful detention of the property of any such person; or,

3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

13-306. **Menace—in what it consists.** Menace consists in a threat:

1. Of such duress as is specified in subdivisions 1 and 3 of the last section;

2. Of unlawful and violent injury to the person or property of any such person, as is specified in the last section; or,

3. Of injury to the character of any such person.

13-307. **Fraud, actual or constructive.** Fraud is either actual or constructive.

13-308. **Actual fraud, acts constituting.** Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance with intent to deceive another party, thereto, or to induce him to enter into the contract;

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.

3. The suppression of that which is true, by one having knowledge or belief of the fact;

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive.

13-309. **Constructive fraud.** Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; or,

2. In any such act or omission as the law especially declares to be fraudulent, without respect to actual fraud.

13-310. **Actual fraud a question of fact.** Actual fraud is always a question of fact.

13-311. **Undue influence—in what it consists.** Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

13-312. **Mistakes, kinds of.** Mistake may be either of fact or law.

13-313. **Mistake of fact.** Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

13-314. **Mistake of law.** Mistake of law constitutes a mistake, within the meaning of this chapter, only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

13-315. **Mistake of foreign laws.** Mistake of foreign laws is a mistake of fact.

13-316. **Mutuality of consent.** Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the chapter on interpretation, they are to be deemed so to agree without regard to the fact.

13-317. **Communication of consent.** Consent can be communicated with effect only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

13-318. **Mode of communicating acceptance of proposal.** If a proposal prescribed any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

13-319. **When communication deemed complete.** Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

13-320. **Acceptance by performance of conditions.** Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

13-321. **Acceptance must be absolute.** An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal.

13-322. **Revocation of proposal.** A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

13-323. **Revocation—how made.** A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by section 13-317 and 13-319, before his acceptance has been communicated to the former;

2. By the lapse of the time prescribed in such proposal for its acceptance; or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

4. By the death or insanity of the proposer.

13-324. **Ratification of contract void for want of consent.** A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

13-325. **Assumption of obligation by acceptance of benefits.** A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

OBJECT

Section 13-401. Object of contract.
13-402. Requisites of object.
13-403. Impossibility, what deemed.
13-404. When contract wholly void.
13-405. When contract partially void.

13-401. **Object of contract.** The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

13-402. **Requisites of object.** The object of the contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

13-403. **Impossibility, what deemed.** Everything is deemed possible except that which is impossible in the nature of things.

13-404. **When contract wholly void.** Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

13-405. **When contract partially void.** Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

CONSIDERATION

Section 13-501. Good consideration, what constitutes.
13-502. How far legal or moral obligation is a good consideration.
13-503. Consideration lawful.
13-504. Effect of illegality.
13-305. Consideration executed or executory.
13-506. Executory consideration.
13-507. How ascertained.
13-508. Effect of impossibility of ascertaining consideration.

13-509. Same—possible of execution on face.
13-510. Written instrument presumptive evidence of consideration.
13-511. Burden of proof to invalidate sufficient consideration.

13-501. **Good consideration, what constitutes.** Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

13-502. **How far legal or moral obligation is a good consideration.** An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

13-503. **Consideration lawful.** The consideration of a contract must be lawful within the meaning of section 13-801.

13-504. **Effect of illegality.** If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

13-505. **Consideration executed or executory.** A consideration may be executed or executory, in whole or in part. Insofar as it is executory, it is subject to the provisions of sections 13-401 to 13-405 of this code.

13-506. **Executory consideration.** When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

13-507. **How ascertained.** When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

13-508. **Effect of impossibility of ascertaining consideration.** Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

13-509. **Same—possible of execution on face.** Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

13-510. **Written instruments presumptive evidence of consideration.** A written instrument is presumptive evidence of a consideration.

13-511. **Burden of proof to invalidate sufficient consideration.** The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

CREATION OF CONTRACTS—ORAL AND WRITTEN

Section 13-601. Contracts, express or implied.
13-602. Express contract defined.
13-603. Implied contract defined.
13-604. When contracts may be oral.
13-605. Contract not in writing through fraud may be enforced against fraudulent party.
13-606. What contracts must be in writing.

13-607. Effect of written contracts.
13-608. Contract in writing—take effect when.
13-609. Provisions of chapter on transfers of real property.
13-610. Seals—how affixed.
13-611. Provisions abolishing seals made applicable.
13-612. Instruments effectual without seal.

13-601. **Contracts, express or implied.** A contract is either express or implied.

13-602. **Express contract defined.** An express contract is one the terms of which are stated in words.

13-603. **Implied contract defined.** An implied contract is one the existence and terms of which are manifested by conduct.

13-604. **When contracts may be oral.** All contracts may be oral except such as are specially required by statute to be in writing.

13-605. **Contract not in writing through fraud may be enforced against fraudulent party.** Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

13-606. **What contracts must be in writing.** The following contracts are invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 30-105 of this code.

3. An agreement made upon consideration of marriage other than a mutual promise to marry.

4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

5. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation of a commission.

This section shall not apply to agreements subject to the Uniform Commercial Code. (Effective January 1, 1965).

13-607. **Effect of written contracts.** The execution of a contract in writing, whether the law requires it to be written or not supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

13-608. **Contract in writing—take effect when.** A contract in writing takes effect upon its delivery to the party in whose favor it is made or to his agent.

13-609. **Provisions of chapter on transfers of real property.** The provisions of the chapter on transfers in general, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

13-610. **Seals—how affixed.** A corporate or official seal may be affixed to an instrument by the mere impression upon the paper or other material on which such instrument is written.

13-611. **Provisions abolishing seals made applicable.** All distinctions between sealed and unsealed instruments are abolished.

13-612. **Instruments effectual without seal.** All instruments shall be as effectual without a seal as if the same had a seal attached thereto, but this section shall not apply to municipal or other corporations which by law are required to attest their action under seal.

INTERPRETATION OF CONTRACTS

Section 13-701. Uniformity of interpretation.
13-702. Contracts—how to be interpreted.
13-703. Intention of parties—how ascertained.
13-704. Intention to be ascertained from language.
13-705. Interpretation of written contracts.
13-706. Writing—when disregarded.
13-707. Effect to be given to every part of contract.
13-708. Several contracts—when taken together.
13-709. Interpretation in favor of contract.
13-710. Words to be understood in usual sense.
13-711. Technical words.
13-712. Law of place.
13-713. Contracts explained by circumstance.
13-714. Contract restricted to its evident object.
13-715. Interpretation in sense in which promisor believed promisee to reply.
13-716. Particular clauses subordinate to general intent.
13-717. Contract—partly written and partly printed—written parts control.
13-718. Repugnancies—how reconciled.
13-719. Inconsistent words rejected.
13-720. Words to be taken most strongly against whom.
13-721. Reasonable stipulations—when implied.
13-722. Necessary incidents implied.
13-723. Time of performance of contract.
13-724. Time—when of essence.
13-725. When joint and several.
13-726. Same—in singular number.
13-727. Executed and executory contracts defined.

13-701. **Uniformity of interpretation.** All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

13-702. **Contracts—how to be interpreted.** A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

13-703. **Intention of parties—how ascertained.** For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

13-704. **Intention to be ascertained from language.** The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

13-705. **Interpretation of written contracts.** When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this chapter.

13-706. **Writing—when disregarded.** When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

13-707. **Effect to be given to every part of contract.** The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

13-708. **Several contracts—when taken together.** Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

13-709. **Interpretation in favor of contract.** A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done, without violating the intention of the parties.

13-710. **Words to be understood in usual sense.** The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

13-711. **Technical words.** Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

13-712. **Law of place.** A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

13-713. **Contracts explained by circumstances.** A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.

13-714. **Contract restricted to its evident object.** However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

13-715. **Interpretation in sense in which promisor believed promisee to rely.** If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

13-716. **Particular clauses subordinate to general intent.** Particular clauses of a contract are subordinate to its general intent.

13-717. **Contract partly written and partly printed—written parts control.** Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And, if the two are absolutely repugnant, the latter must be so far disregarded.

13-718. **Repugnancies—how reconciled.** Repugnancies in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

13-719. **Inconsistent words rejected.** Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

13-720. **Words to be taken most strongly against whom.** In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a

private party, in which it is presumed that all uncertainty was caused by the private party.

13-721. **Reasonable stipulations—when implied.** Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

13-722. **Necessary incidents implied.** All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

13-723. **Time of performance of contract.** If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained.

13-724. **Time—when of essence.** Time is never considered as of the essense of a contract, unless by its terms expressly so provided.

13-725. **When joint and several.** Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

13-726. **Same—in singular number.** A promise made in the singular number, but executed by several persons, is presumed to be joint and several.

13-727. **Executed and executory contract defined.** An executed contract is one, the object of which is fully performed. All others are executory.

UNLAWFUL CONTRACTS

Section 13-801. What is unlawful.
13-802. Certain contracts unlawful.
13-803. Employers protected from negligence.
13-804. Contracts fixing damages void.
13-805. Exception.
13-806. Restraints upon legal proceedings.
13-807. Contract in restraint of trade void.
13-808. Exception in favor of sale of good will.
13-809. Exception in favor of partnership agreements.
13-810. Contract in restraint of marriage void.
13-811. Agreements concerning confession of judgment, acceptance of service, entry of default in contract to pay money are void and illegal.

13-801. **What is unlawful.** That is not lawful which is:

1. Contrary to an express provision of law;

2. Contrary to the policy of express law, though not expressly prohibited; or,

3. Otherwise contrary to good morals.

13-802. **Certain contract unlawful.** All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or for wilful injury to the person or property of another, or violation of law, whether wilful or negligent, are against the policy of the law.

13-803. **Employers protected from negligence.** Any contract or agreement entered into by any person, company, or corporation with its

servants or employees, whereby such persons, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company, or corporation, by reason of the negligence of such person, company or corporation, or the agents or employees thereof, shall be absolutely null and void.

13-804. **Contracts fixing damages void.** Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in the next section.

13-805. **Exception.** The parties to a contract may agree therein upon an amount which shall be presumed to be an amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

13-806. **Restraints upon legal proceedings.** Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract, by the usual proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

13-807. **Contract in restraint of trade void.** Any contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided for by the next two sections, is to that extent void.

13-808. **Exception in favor of sale of good-will.** One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or part thereof, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein.

13-809. **Exception in favor of partnership agreements.** Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

13-810. **Contract in restraint of marriage void.** Every contract in restraint of the marriage of any person, other than a minor, is void.

13-811. **Agreements concerning confession of judgment, acceptance of service, entry of default in contract to pay money are void and illegal.** No contract in writing by which any promise to pay money is created, shall contain any provision either (a) empowering any person to enter judgment by confession against any party to the contract, or (b) empowering any person as the agent of any party to the contract to either confess judgment, accept service of process or consent on behalf of such party to the entry of his default, in any proceeding in court upon such contract. The term "contract" as herein used shall include all writings executed contemporaneously with and constituting a part of the same transaction, and whether such writings be negotiable or non-negotiable in form. Every such provision in any such contract shall be illegal and void and shall be unenforceable in the courts of this state against any party to such contract.

EXTINCTION OF CONTRACTS—RESCISSION—ALTERATION—CANCELLATION

Section 13-901. Contracts—how extinguished.
13-902. Rescission extinguishes contract.
13-903. When party may rescind.
13-904. When stipulations against right to rescind do not defeat it.

13-905. Rescission—how affected.
13-906. Alteration of verbal contract.
13-907. Written contracts—how modified.
13-908. Extinction by cancellation, etc.
13-909. Extinction by intentional destruction, cancellation or alteration.
13-910. Alteration of duplicate, not to prejudice.

13-901. **Contracts—how extinguished.** A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this chapter.

13-902. **Rescission extinguishes contract.** A contract is extinguished by its rescission.

13-903. **When party may rescind.** A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him was given by mistake, or obtained through duress, menace, fraud or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;

2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part;

3. If such consideration becomes entirely void from any cause;

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all the other parties.

13-904. **When stipulations against right to rescind do not defeat it.** A stipulation that errors of description shall not avoid a contract or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter of essential to the inducement of the contract, and is not capable of exact and entire compensation.

13-905. **Rescission—how effected.** Rescission, when not effected by consent, can be accomplished only by the use on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract, or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

13-906. **Alteration of verbal contract.** A contract not in writing may be altered in any respect by consent of the parties in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

13-907. **Written contracts—how modified.** A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

13-908. **Extinction by cancellation, etc.** The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with the intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

13-909. **Extinction by intentional destruction, cancellation or alteration.** The intentional destruction, cancellation, or material alteration of

a written contract by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor against parties who do not consent to the act.

13-910. **Alteration of duplicate, not to prejudice.** Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

DAMAGES AND RELIEF

Measure of Damages

Section 17-304. Detriment caused by breach of covenant of seizin, etc., what is.
17-305. Detriment caused by breach of covenant against incumbrances, what is.

17-304. **Detriment caused by breach of covenant of seizin, etc., what is.** The detriment caused by the breach of a covenant of "seizin" of "right to convey," of "warranty," or of "quiet enjoyment," in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor; or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property.

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding five years.

3. Any expenses properly incurred by the covenantee in defending his possession.

17-305. **Detriment caused by breach of covenant against incumbrances, what is.** The detriment caused by the breach of a covenant against incumbrances, in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach, as compared with the whole, or, in the latter case, interest on a like amount.

DOWER

Section 22-101. Dower.
22-102. Mortgage lands subject to dower.
22-103. Dower subject to purchase money.
22-104. Dower in surplus under mortgage.
22-105. Dower not to attach unless absolute title.
22-106. Absent wife need not sign deed.
22-107. Widow may elect.
22-108. Renunciation and form of.
22-109. Rights of widow when no issue.
22-110. Rights of widow when land exchanged.
22-111. Widow's rights in land aliened.
22-112. Antenuptial settlement—when a bar to dower.
22-113. Assent to marriage settlement.
22-114. When dower may be assigned anew.
22-115. Endowed woman not to suffer waste.
22-116. Right to dower not affected by acts of husband.
22-117. Assignment of dower—by what regulated.

22-101. **Dower.** A widow shall be endowed of the third part of all lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless the same shall have been relinquished in legal form. When a wife joins with her husband in the execution of any conveyance of land, she thereby relinquishes her inchoate right, and shall not thereafter have dower therein, except that in case of sale under mortgage signed and executed by herself and husband she shall have a right of dower in the surplus. Equitable estates shall be subject to the widow's dower, and all real estate of every description, contracted for by the husband during his lifetime, the title to which may be completed after his decease.

22-102. **Mortgage lands subject to dower.** When a person seized of an estate of inheritance in land shall have executed a mortgage of such estate before or after marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

22-103. **Dower subject to purchase money.** When a husband shall purchase lands during coverture, and shall mortgage such lands to secure the payment of the purchase money thereof, his widow shall not be entitled to dower out of such lands as against the mortgagee, or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to dower as against all other persons.

22-104. **Dower in surplus under mortgage.** When, in the cases specified in the two preceding sections, the mortgagee, or those claiming under him, shall, after the death of such husband, cause the land mortgaged to be sold, either under a power contained in the mortgage or by virtue of a judgment or decree of a court, and any surplus shall remain after the payment of the moneys due on such mortgage and the costs and charges of sale, such widow shall be entitled to the interest or income of one-third part of such surplus for life as her dower.

22-105. **Dower not to attach unless absolute title.** A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he shall have acquired an absolute estate during the marriage.

22-106. **Absent wife need not sign deed.** Any married man residing and owning real property in the state, whose wife has never been in the state or territory of Montana, can by deed, mortgage, or other conveyance, grant the full title to such property by his own signature, and the wife or widow shall have no dower interest in the property to which the title of the husband is so divested.

22-107. **Widow may elect.** Every devise or bequest to her by her husband's will shall bar a widow's dower in his lands and her share in his personal estate unless otherwise expressed in the will; but she may elect whether she will take under the provisions for her in the will of her deceased husband or will renounce the benefit of such provisions for her in the will of her deceased husband or will renounce the benefit of such provisions for her, and take her dower in the lands and her share in the personal estate under the succession statutes, as if there had been no will, but not in the excess of two-thirds (⅔) of the husband's net estate, real and personal, after the payment of creditor's claims, expenses of administration and any and all taxes, including state and federal inheritance and estate taxes.

22-108. **Renunciation and form of.** When a woman is entitled to an election under this chapter, she shall be deemed to have taken such devise, unless, within one year after the authentication or probate of the will, she shall deliver or transmit to the district court of the proper county a written renunciation, which may be in the following form, to wit: "I, AB, widow of CD, late of the county of _____, state of Montana, do hereby renounce and quit all claims to the benefit of any bequest or devise made to me by the last will and testament of my

said deceased husband, which has been exhibited and proved according to law (or otherwise, as the case may be), and I do elect to take in lieu thereof my dower, or legal share of the estate of my said husband," which said letter of renunciation shall be filed in the office of the clerk of the district court, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provision which may have been thus made for her in the will of any testator, in lieu of dower; and by thus renouncing all claims as aforesaid, such widow shall thereupon be entitled to dower in the lands or share in the personal estate of her husband.

22-109. **Rights of widow when no issue.** If a husband die, leaving a widow, but no children, nor descendents of children, such widow may, if she elect, have in lieu of her dower in the estate of which her husband died seized whether the same shall have been assigned or not, absolute and in her own right, as if she were sole, one-half of all the real estate which shall remain after the payment of all just debts and claims against the deceased husband; provided that, in case dower in such estate shall have been already assigned she shall make such new election within two months after being notified of the payment of such claims and debts.

22-110. **Rights of widow when land exchanged.** If a husband, seized of an estate of inheritance in lands, exchanges it for other lands, his widow shall not have dower of both, but shall make her election as hereinbefore provided, to be endowed of the lands given, or of those taken in exchange. And if such election be not evinced by the commencement of the proceedings for the recovery and assignment of her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands taken in exchange.

22-111. **Widow's rights in land aliened.** When a widow is entitled to a dower out of any lands aliened by her husband in his lifetime, and such lands have been enhanced in value after the alienation, such lands shall be estimated in setting out the widow's dower according to their value at the time when they were so aliened.

22-112. **Antenuptial settlement—when a bar to dower.** A woman may be barred of her dower in all of the land of her husband by a jointure settled on her with her assent before the marriage; provided, such jointure consists of a freehold estate in lands for the life of the wife, at least, to take effect in possession or profits immediate on the death of the husband.

22-113. **Assent to marriage settlement.** Such assent shall be expressed if the woman is full age by her becoming a party to the conveyance by which it is settled, and if she is under age, by her joining with her father or guardian in such conveyance.

22-114. **When dower may be assigned anew.** If a woman is lawfully evicted of lands assigned to her as a dower or settled upon the jointure, or is deprived of the provisions made for her by will or otherwise, in lieu of dower, she may be endowed anew in like manner as if such assignment jointure, or other provision had not been made.

22-115. **Endowed woman not to suffer waste.** No woman endowed of any lands shall commit or suffer waste on the same; but she shall maintain the houses and tenements with the fences and appurtenances in good repair, and shall be liable to the persons having the next immediate estate of inheritance therein for all damages occasioned by any waste committed or suffered by her.

22-116. **Right to dower not affected by acts of husband.** No act, deed, or conveyance, executed or performed by the husband, without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the estates of married women, and no default,

covin, or crime of the husband, shall prejudice the rights of the wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

22-117. **Assignment of dower—by what regulated.** The procedure for assignment of dower upon the death of the husband is regulated by the provisions of sections 91-2601 to 91-2612.

HOMESTEADS

Section 33-101. Homestead—of what it consists.
33-105. Homestead—when subject to execution or forced sale.
33-124. Homesteads—quantity and value of land.
36-131. Tenancy by curtesy not allowed.

33-101. **Homestead—of what it consists.** The homestead consists of the dwelling house in which the claimant resides, and the land on which the same is situated, selected as in this chapter provided.

33-105. **Homestead—when subject to execution or forced sale.** The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises; but no judgments obtained before this code takes effect shall constitute such liens;

2. On debts secured by mechanics' or vendors' liens upon the premises;

3. On debts secured by mortgages on the premises, executed and acknowledged by the husband and wife, or by an unmarried claimant;

4. On debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record.

33-124. **Homesteads—quantity and value of land.** Homesteads may be selected and claimed:

1. Consisting of any quantity of land not exceeding three hundred and twenty (320) acres used for agricultural purposes, and the dwelling house thereon and its appurtenances, and not included in any town plot, city or village; or

2. A quantity of land not exceeding in amount one-fourth (¼) of an acre, being within a town plot, city or village, and the dwelling house thereon and its appurtenances.

3. Such homestead, in either case, shall not exceed in value the sum of seven thousand five hundred dollars ($7,500.00), provided, however, that in any proceedings instituted to determine the value of such homestead, the assessed value of such land, with included appurtenances, if any, and of such dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

36-131. **Tenancy by curtesy not allowed.** No estate is allowed the husband as tenant by curtesy upon the death of his wife.

INSTRUMENTS, ACKNOWLEDGMENT AND PROOF

Acknowledgment and Proof of Instruments

Section 39-102. Same—where and by whom acknowledgments may be taken.
39-107. Officer taking acknowledgment must know person—corporations.

39-102. **Same—where and by whom acknowledgments may be taken.** The proof of acknowledgment of an instrument may be made in this state within the city, county or district for which the officer was elected or appointed, before either:

1. A clerk of a court of record; or,
2. A county clerk; or,
3. A notary public; or,
4. A justice of the peace; or,
5. A United States commissioner.

39-107. **Officer taking acknowledgment must know person—corporations.** The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president, or vice-president, or secretary or assistant secretary of such corporation, or other person duly authorized by resolution of such corporation, who executed it on its behalf.

LANDLORD AND TENANT—HIRING

Hiring—in General

Section 42-101. Hiring defined.
42-102. Products of thing.
42-103. Quiet possession.
42-104. Degree of care, etc., on part of hirer.
42-105. Must repair injuries, etc.
42-106. Things let for a particular purpose.
42-107. When letter may terminate the hiring.
42-108. When hirer may terminate the hiring.
42-109. When hiring terminates.
42-110. When terminated by death, etc. of party.

42-101. **Hiring defined.** Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

42-102. **Products of thing.** The products of a thing hired, during the hiring, belong to the hirer.

42-103. **Quiet possession.** An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired, during the term of the hiring, against all persons lawfully claiming the same.

42-104. **Degree of care, etc., on part of hirer.** The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

42-105. **Must repair injuries, etc.** The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

42-106. **Things let for a particular purpose.** When a thing is let for a particular purpose, the hirer must not use it for any other purpose; and if he does, the letter may hold him responsible for its safety during such use in all events, or may treat the contract as thereby rescinded.

42-107. **When letter may terminate the hiring.** The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

42-108. **When hirer may terminate the hiring.** The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfil his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any cause than the ordinary negligence of the hirer.

42-109. **When hiring terminates.** The hiring of a thing terminates:

1. At the end of the term agreed upon;

2. By the mutual consent of the parties;

3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,

4. By the destruction of the thing hired.

42-110. **When terminated by death, etc., of party.** If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY

Section 42-205. Renewal of lease by lessee's continued possession.
42-206. Notice to quit.

42-205. **Renewal of lease by lessee's continued possession.** If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts a rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month, when the rent is payable monthly, nor in any case one year.

42-206. **Notice to quit.** A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

LIENS

Mechanics' Liens

Section 45-501. Who entitled to lien.
45-502. How lien perfected.
45-504. What property affected.
45-505. Leasehold interest—how affected.
45-506. Priority of lien over mortgage or other liens.
45-510. Limitation of actions.
45-512. Satisfaction of lien.
45-1101. Lien or seller of real property.
45-1105. Purchaser's lien on real property.

45-501. **Who entitled to lien.** Every mechanic, miner, machinist, architect, foreman, engineer, builder, lumberman, artisan, workman, laborer, and any other person, performing any work and labor upon, or furnishing any material, machinery or fixture for, any building, structure, bridge, flume, canal, ditch, aqueduct, mining claim, coal mine, quartz lode, tunnel, city or town lot, farm, ranch, fence, railroad, telegraph, telephone, electric light, gas, or waterworks or plant, or any improvements upon complying with the provisions of this chapter, for his work or labor done, or material, machinery or fixtures furnished, has a lien upon the property upon which the work or labor is done or material is furnished.

45-502. **How lien perfected.** Every person wishing to avail himself of the benefits of this chapter must file with the county clerk of the county in which the property or premises mentioned in the preceding section is situated, and within ninety days after the material or machinery aforesaid has been furnished, or the work or labor performed, a just and true account of the amount due him, after allowing all credits, and containing a correct description of the property to be charged with such lien, verified by affidavit, but any error or mistake in the account or description does not affect the validity of the lien, if the property can be identified by the description; which paper containing the account, description, and affidavit is deemed the lien, and when there is an open account between the parties for labor, material, or machinery, such lien may be filed within ninety days after the date of the last item in such account, and include all items and charges contained therein, for material or machinery furnished for, or work performed on, the property on which the lien is claimed.

45-504. **What property affected.** The lien given extends to the lot or land upon which any such building, improvement or structure is situated, to the extent of one acre, if outside of any town or city, or if within any town or city, then to the extent of the whole lot or lots upon which the same is situated, if the land belonged to the person who caused said building to be constructed, altered, or repaired; but if such person owned less than a fee-simple estate in such land, then only his interest therein is subject to such lien; all liens for any work or labor done or materials furnished upon the same premises, which shall be filed within thirty days after the filing of the first lien on such premises, shall entitle the holders thereof to share equally pro rata, according to the amount of their respective liens, in the proceeds arising from the sale of such premises upon the foreclosure of such liens. If after the expiration of thirty days, other liens are filed against such premises then all liens filed within sixty days after the filing of such subsequent lien are liens of the second class, and share pro rata in any proceeds arising from the sale of the said premises which may remain after all liens of the first class have been paid. The liens for work or labor done, or material furnished, as specified in this chapter, shall be prior to and have precedence over any mortgage, encumbrance or other lien made subsequent to the commencement of work on any contract for the erection of such building, structure, or other improvement.

45-505. **Leasehold interest—how affected.** When the interest in the land, building, structure, or other improvement is a leasehold interest, the forfeiture of such lease does not forfeit or impair such liens so far as concerns the buildings, structures, and improvements put thereon by the persons charged with such lien, but the same may be sold to satisfy said lien, and may be removed within twenty days after the sale thereof by the purchaser.

45-506. **Priority of lien, over mortgage or other liens.** The liens attach to the buildings, structures, or improvements for which they were furnished or the work was done in preference to any prior lien, encumbrance, or mortgage upon the land upon which said buildings, structures,

or improvements are erected; and any person enforcing such lien may sell the same under execution, and the purchaser may remove the property sold within a reasonable time thereafter.

45-510. **Limitation of actions.** All actions under this chapter must be commenced within two years from the date of the filing of the lien.

45-512. **Satisfaction of lien.** Whenever any indebtedness which is a lien upon any such real estate, structure, building, or other improvement is paid and satisfied, it is the duty of the creditors to acknowledge satisfaction thereof as in case of mortgage; and if any creditor fail to acknowledge satisfaction, as aforesaid, he is liable to any person injured by such failure to the amount of such injury and the costs of action.

45-1101. **Lien of seller of real property.** One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

45-1105. **Purchaser's lien on real property.** One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

LOANS

Loans for Use or Exchange—Loan of Money

Section 47-125. Legal interest—any rate not exceeding ten per cent allowed by agreement.
47-126. Penalty for usury—action to recover excessive interest.

47-125. **Legal interest—any rate not exceeding ten per cent allowed by agreement.** Parties may agree in writing for the payment of any rate of interest not exceeding the rate of ten per cent annum, and such interest shall be allowed, according to the terms of the agreement, until the entry of judgment.

47-126. **Penalty for usury—action to recover excessive interest.** The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section shall be deemed a forfeiture of a sum double the amount of interest which the note, bill, or other evidence of debt carries, or which has been agreed to be paid thereon.

When a greater rate of interest has been paid, the person by whom it has been paid, his heirs, assigns, executors, or administrators, may recover from the person, firm or corporation, taking, receiving, reserving or charging same a sum double the amount of interest so paid; provided, that such action shall be brought within two years after the payment of said interest; and provided, that before any suit may be brought to recover such usurious interest, the party bringing suit must make written demand for return of said interest so paid.

MORTGAGES

Mortgages in General

Section 52-101. Mortgage defined.
52-107. Mortgage does not entitle mortgagee to possession.

52-101. **Mortgage defined.** Mortgage is a contract by which specific property is hypothecated for the performance of an act without the necessity of a change of possession.

52-107. **Mortgage does not entitle mortgagee to possession.** A mortgage does not entitle the mortgagee to the possession of the property unless authorized by the express terms of the mortgage; but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration.

MORTGAGES OF REAL PROPERTY

Section 52-201. What real property may be mortgaged—debts secured —future advances—lien.
52-202. Form of mortgage.
52-203. Writing required for creation, extension or renewal of mortgages.
52-204. Defeasance to affect grant absolute on its face must be recorded.
52-205. May be recorded.
52-206. Period of lien of mortgage—renewal.
52-207. Satisfaction of mortgage—marginal entry.
52-208. Same—certificate of payment or discharge.
52-210. Satisfaction of mortgage.
52-212. Mortgages and deeds of trust covering real and personal property.

52-201. **What real property may be mortgaged—debts secured—future advances—lien.** Any interest in real property which is capable of being transferred may be mortgaged. Such property or interest may be mortgaged to secure existing debts, to secure debts created simultaneously with the execution of the mortgage, and to secure advances then in contemplation but to be made in the future. The total amount of all future advances contemplated and to be subject to mortgage protection must be stated in the mortgage, provided the mortgagee may reserve the right, at the mortgagee's option, to refuse to make all or any part thereof. The lien for said stated amount of said future advances shall have priority to the same extent as if the amount thereof had been actually advanced by the mortgagee to the mortgagor at the time of the execution of the mortgage. The mortgagee shall, upon demand of the mortgagor or a creditor, furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances. Upon receipt of such statement, or at any other time following the execution and delivery of the mortgage, the mortgagor may deliver written notice, duly acknowledged, to the mortgagee plainly stating that the mortgagor does not desire to request or apply for any future advances if none have been allowed, or for any further advances if additional advances have in fact been theretofore allowed under the mortgage, clearly identifying the mortgage by reference to its date, the parties thereto and the principal amount of the original indebtedness and the limit placed on contemplated future advances, if allowed. Upon the recording of such written notice by the mortgagor in the county and counties where the mortgage is recorded, the lien of the mortgage shall continue to have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. Any lien entitled to actual priority over the lien of mortgage by force of any express provision of the laws of this state shall continue to have priority to the extent prescribed by law.

52-202. **Form of mortgage.** A mortgage of real property may be made in substantially the following form:

"This mortgage, made the _____ day of _____, in

the year _____, by A B, of _____, mortgagor, to C D, of _____ mortgagee, witnesseth:

"That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of _____ dollars, on (or before) the _____ day of _____, in the year _____, with interest thereon (or as security for the payment of an obligation, describing it etc.).

A B."

52-203. **Writing required for creation, extension or renewal of mortgages.** A mortgage of real property can be created, renewed, or extended, only by writing, with the formalities required in the case of a grant of real property.

52-204. **Defeasance, to affect grant absolute on its face, must be recorded.** When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated.

52-205. **May be recorded.** Mortgages of real property may be acknowledged or proved, certified, and recorded in like manner and with like effect as grants thereof.

52-206. **Period of lien of mortgage—renewal.** Every mortgage of real property made, acknowledged, and recorded as provided by the laws of this state, shall be good as against all from the time it is so recorded until eight years after the maturity of the entire debt or obligation secured thereby and no longer, unless the mortgagee, his heirs, executors, administrators, representatives, or assigns shall within sixty days after the expiration of said eight years, file in the office of the county clerk where said mortgage is recorded, an affidavit, setting forth the date of said mortgage, when and where recorded, the amount of the debt secured thereby, and the amount remaining unpaid, and that the said mortgage is not renewed for the purpose of hindering, delaying, or defrauding creditors of the mortgagor or owner of the land, and upon the filing of said affidavit, the said mortgage shall be valid against all persons for a further period of eight years.

52-207. **Satisfaction of mortgage—marginal entry.** Any mortgage that has been or may be hereafter recorded may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the county clerk or his deputy, who shall subscribe the same as a witness. Such entry shall have the same effect as a deed of release duly acknowledged and recorded.

52-208. **Same—certificate of payment or discharge.** Any mortgage shall also be discharged upon the record thereof, by the county clerk in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged or proved and certified, as in this code prescribed, to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

52-210. **Satisfaction of mortgage.** Any mortgagee or his personal representative or assignee, as the case may be, after the full performance of the conditions of the mortgage, whether before or after a breach

thereof, who shall, for the space of thirty days after being requested, refuse, or neglect to execute, acknowledge and deliver to the mortgagor a certificate of discharge or release thereof, shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars; and also, for all actual damages occasioned by such neglect or refusal. When such discharge or release is made by the personal representative of the mortgagee, it shall be accompanied by a certified copy of his authority, unless such authority is already of record in the office of the county clerk and recorder where such mortgage is recorded. In case such discharge or release is made by an assignee, it must be accompanied by the assignment of such mortgage, unless such assignment is already of record in the office of the county clerk and recorder where such mortgage is recorded. In the event that such discharge or release is executed by an attorney in fact, such discharge or release shall have attached to it the power of attorney under which it is made, unless such power of attorney is already of record in the office of the county clerk and recorder where such mortgage is recorded. When such discharge or release is executed by the heir or heirs of the mortgagee, such discharge or release must be accompanied by a certified copy of an order or decree of the court of competent jurisdiction, showing such authority, unless such order or decree is already of record in the office of the county clerk and recorder where such mortgage is recorded. Foreign administrators and executors may satisfy mortgages of record in Montana, provided that the satisfaction of mortgages be accompanied by an authenticated copy of their letters of administration, or letters testamentary, with the certificate of the clerk of the court in which the appointment was made, that the same have not been revoked and are in full force, which certificate and certified copy of letters shall be presented and recorded in connection with the satisfaction of the mortgage. When so presented and recorded, they shall have the same force and effect as if the mortgage was satisfied by the mortgagee.

52-212. **Mortgages and deeds of trust covering real and personal property.** All mortgages and deeds of trust covering both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned.

SMALL TRACT FINANCING ACT

Section 52-401. Short title.
52-402. Declaration of policy.
52-403. Definitions.
52-404. Authorization of trust indentures.
52-405. Qualifications of trustee.
52-406. Reconveyance upon performance—liability for failure to reconvey.
52-407. Time within which foreclosure must be commenced.
52-408. Foreclosure by advertisement and sale.
52-409. Notice of sale to be mailed, posted and published.
52-410. Trustee's deed.
52-411. Possession.
52-412. Discontinuance of foreclosure proceedings when entire amount of default paid.
52-413. Disposition of proceeds of sale.
52-414. Deficiency judgment not allowed.
52-415. Requests for copies of notice of sale.
52-416. Trustee's fees and attorney's fees.
52-417. Trust indenture deemed to be mortgage on real property.

52-401. **Short title.** This act may be cited as the "Small Tract Financing Act of Montana."

52-402. **Declaration of policy.** Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than three acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than three acres as hereinafter provided.

52-403. **Definitions.** As used in this act, unless the context requires otherwise:

1. "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee.

2. "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

3. "Trust indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

4. "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest.

5. "Three acres" means three acres of land.

Where the trust indenture states that the real property involved does not exceed three acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make a transfer, trust, and power of sale.

52-404. **Authorization of trust indentures.** Transfers in trust of any interest in real property of an area not exceeding three acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

52-405. **Qualifications of trustee.**

1. The trustee of a trust indenture under this act shall be:
   (a) An attorney who is licensed to practice law in Montana; or
   (b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or
   (c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

2. The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and

the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

52-406. **Reconveyance upon performance—liability for failure to reconvey.** Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or the trustee refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

52-407. **Time within which foreclosure must be commenced.** The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

52-408. **Foreclosure by advertisement and sale.**

1. The trustee may foreclose a trust indenture by advertisement and sale under this act if:

(a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

(b) There is a default by the grantor or other person owing an obligation, the performance of which authorizes sale in the event of default of such provisions; and

(c) The trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(ii) A description of the property covered by the trust indenture;

(iii) The book and page of the mortgage records where the trust indenture is recorded;

(iv) The default for which the foreclosure is made;

(v) The sum owing on the obligation secured by the trust indenture;

(vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;

(vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 a.m. and 4:00 p.m., Mountain Standard Time;

(viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

2. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

52-409. **Notice of sale to be mailed, posted, and published.**

1. The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) The grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) Each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) Each person who has filed for record a request for a copy of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) Any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) Any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold;

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

2. On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels and any person including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

3. The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to re-sell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

52-410. **Trustee's deed.**

1. The trustee's deed to the purchaser at the trustee's sale may contain in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

2. When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection 2 of section 9 (52-409 2) of this act, shall be prima-facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

3. The trustee's deed shall operate to convey to the purchaser, without right or redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

52-411. **Possession.** The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

52-412. **Discontinuance of foreclosure proceedings when entire amount of default paid.** Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure to the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had not the default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and

shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is canceled.

52-413. **Disposition of proceeds of sale.** The trustee shall apply the proceeds of the trustee's sale as follows:

1. To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

2. To the obligation secured by the trust indenture;

3. The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

52-414. **Deficiency judgment not allowed.** When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other further action suit, or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

52-415. **Requests for copies of notice of sale.** At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection 1 of section 9 (52-409 1) of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

52-416. **Trustee's fees and attorney's fees.** Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of section 12 (52-412) of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed $150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

52-417. **Trust indenture deemed to be mortgage on real property.** A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

NUISANCE

Section 57-101. Nuisance defined.

57-101. **Nuisance defined.** Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, or basin, or any public park, square, street, or highway is a nuisance.

PARTNERSHIP

Partnership—Use of Fictitious Name

Section 63-601. Fictitious name.
63-602. Certificate—when to be filed.
63-606. Individual using fictitious name in business must file certificate.

63-601. **Fictitious name.** Every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated, a certificate stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week, for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then a newspaper published in an adjoining county.

63-602. **Certificate—when to be filed.** The certificate filed with the clerk, as provided in the preceding section, must be signed by the partners and acknowledged before some officer authorized to take acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed and the publication designated in that section must be made within six months after the passage of this code. Persons doing business as partners contrary to the provisions of this chapter, or any assigns thereof, shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any court of this state, until they have first filed the certificate and made the publication herein required.

63-606. **Individual using fictitious name in business must file certificate.** Every individual now transacting business, or who may hereafter transact business, in this state under a fictitious name or a style or designation purporting to be a firm name or corporate name, shall file and publish, or cause to be filed and published, the certificate described in sections 63-601, 63-602 and 63-603. Anyone doing business contrary to the provisions of this section shall be subject to the disabilities and provisions of section 63-602.

SPECIAL PARTNERSHIP—POWERS, DUTIES AND LIABILITIES OF PARTNERS

Section 63-801. Limited partner not liable to creditors.

63-801. **Limited partner not liable to creditors.** A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

PERSONS AND PERSONAL RIGHTS

Persons, Minors, Adults and Those of Unsound Mind

Section 64-101. Minors and adults defined.
64-102. Periods of minority—how calculated.
64-105. Powers of minors.
64-106. Contracts of minors—disaffirmance.
64-107. When minors may disaffirm.
64-110. Contracts of persons without understanding.
64-111. Contracts of other persons of unsound mind.
64-112. Power of persons whose incapacity has been adjudged —presumption of legal capacity from certificate of institution superintendent or physician.
64-114. Minors may enforce their rights.

64-101. **Minors and adults defined.** Minors are:

1. Males under twenty-one years of age;

2. Females under eighteen years of age.

All other persons are adults.

64-102. **Periods of minority—how calculated.** The periods specified in the preceding section must be calculated from the first minute of the day on which the persons are born to the same minute of corresponding day completing the period of minority.

64-105. **Powers of minors.** A minor cannot give a delegation of power.

64-106. **Contracts of minors—disaffirmance.** A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this chapter, and to the provisions of the chapters on marriage.

64-107. **When minors may disaffirm.** In all cases other than those specified by sections 64-108 and 64-109, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in case of death within that period, by his heirs or personal representatives.

64-110. **Contracts of persons without understanding.** A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

64-111. **Contracts of other persons of unsound mind.** A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the chapter on rescission of this code.

64-112. **Power of persons whose incapacity has been adjudged—presumption of legal capacity from certificate of institution superintendent or physician.** After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, except where such contract confers a beneficial interest to his estate, nor delegate any power, nor waive any right, until his restoration to capacity; but a certificate from the medical superintendent or resident physician or other officer of the insane asylum to which such person may have been committed, whether said insane asylum is in this state or elsewhere, showing that such person has been discharged, released or paroled therefrom, cured and restored to reason, or discharged, released, or paroled in an improved condition shall establish the presumption of

legal capacity in such person from the time of such discharge, release, or parole.

64-114. **Minors may enforce their rights.** A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

REAL ESTATE LICENSE ACT

Section 66-1924. Title—license required.
66-1925. Definitions.
66-1926. Exempted classes.
66-1927. Real estate commission—members—districts—powers and duties—employees—compensation—disposition of fees.
66-1928. Disposition of excess over $7,500.00.
66-1929. Licenses—applicants for licenses.
66-1930. Written examination—contents—time and place—exemptions.
66-1931. License—issuance—suspension—revocation.
66-1932. License—delivery—display—pocket card.
66-1933. Bond of brokers and salesmen.
66-1934. Fees—when due.
66-1935. Requirements for office—employment of salesmen—issuance and display of license.
66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.
66-1937. Grounds for refusal—suspension or revocation of license.
66-1938. Repealed.
66-1938.1. Hearings—procedure.
66-1939. Appeal to court—supersedes—bond.
66-1940. Penalties—legal actions.
66-1941. Action for compensation.
66-1942. Repealed.
66-1943. Real estate meetings and clinics open to all licensees.
66-1944. Attorney for commission.
66-1945. Publication of directory.
66-1946. No repeal of section 94-1822.

66-1924. **Title—license required**. This act shall be known and may be cited as the "Real Estate License Act of 1963." From and after the effective date of this act it shall be unlawful for any person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without first having procured a license as such broker or salesman, or otherwise complied with the provisions of this act.

66-1925. **Definitions.** As used in this act, the following terms shall have the following meanings except where the context clearly indicates that another meaning is intended:

1. The term "real estate" shall include leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

2. The term "broker" shall include any individual who for another, or for a fee, commission or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collects rents or attempts

to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes any individual employed by or on behalf of the owner or owners, or lessor or lessors of real estate, to conduct the sale, leasing, subleasing or the disposition thereof at a salary or for a fee, commission or any other consideration; it also includes any individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, lease or other disposition of real estate within this state through its listings in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both. Corporations, partnerships and associations shall not be licensed under this act but nothing in this act shall prevent a corporation or partnership from acting as a real estate broker provided that every corporation officer, and every partner, actually negotiating or attempting to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collecting rents or attempting to collect rents, on behalf of said corporation or partnership, shall be licensed as a broker. All officers of any corporation or all members of any partnership, acting as a broker, shall be deemed in violation of this act unless there be full compliance with the provisions of this subsection.

3. The term "salesman" shall include any individual who, for salary, commission or compensation of any kind, is employed, either directly, indirectly, regularly or occasionally, by any real estate broker to sell, purchase or negotiate for the sale, purchase, exchange or renting of any real estate.

4. The term "person" shall mean and include individuals, partnerships, associations and corporations, foreign and domestic, except that when referring to a person licensed under this act it shall mean an individual.

5. The term "he" shall mean and include "she" and "it." The term "his" shall mean and include "her" and "its."

66-1926. **Exempted classes.** A single act performed, for a commission or compensation of any kind, in the buying, selling, exchanging, leasing or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this act, however, shall not (1) apply to any person, who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself, or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor, or (2) apply to any person acting as attorney in fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting or leasing of any real estate, or (3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law, or (4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter, or (5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust or will, or an auctioneer, employed by a receiver, trustee in bankruptcy, administrator, executor or trustee, to aid and assist in conducting a public sale held by any such officer, or (6) apply to public officials in the conduct of their official duties, or (7) apply to any person, partnership, association or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling or operating land for hydrocarbons and hard minerals, or disposing of any hydrocarbons, hard minerals or mining rights therein, whether upon a royalty basis or otherwise.

66-1927. **Real estate commission—members—districts—powers and duties—employees—compensation—disposition of fees.** (a) There is

hereby created the Montana real estate commission, hereinafter referred to as the "commission," to consist of the commissioner of agriculture, who shall act as chairman of the commission, and four members, each of whom shall be a resident of this state, at least two of whom shall be acting and licensed as real estate brokers and who have been actively engaged in the real estate business as a broker in this state for not less than five (5) continuous years prior to the date of appointments. The four members of the commission, other than the chairman, shall be appointed by the governor as follows:

Not more than two members shall be from the same congressional district, with no more than one eligible real estate broker residing in the same congressional district, and not more than three persons on the commission, including the chairman, shall be of the same political party. Upon the initial appointments, the first congressional district's two members shall be appointed for one year and the other for three years, and the second congressional district's members shall be appointed for two years and four years, respectively. Thereafter the term of each member shall be four (4) years and until their successors are appointed and qualify. In the event of a vacancy on the commission, the governor shall fill the vacancy by appointing a resident from the same district as the member whose office has become vacant, to serve as a member for the unexpired term. If a member takes up residency in a district different from the one in which he resided at the time of appointment, he automatically vacates his commission position. Upon the qualification of the members appointed, the commission shall do all things necessary and proper for carrying out the provisions of this act, and shall from time to time promulgate rules and regulations not inconsistent herewith and make necessary amendments thereto.

(b) The chairman shall cause to be kept a record of all proceedings, transactions, communications and official acts of the commission, be custodian of all the records of the commission and shall cause to be performed such other duties as the commission upon the written request of two or more members of the commission or at such other times as the chairman may in his discretion deem necessary. The commission is authorized to employ such employees as may be necessary to properly carry out the provisions of this act, to fix the salaries of such employees and to make such other expenditures as are necessary to properly carry out the provisions of this act. The office of the commission shall be maintained in the office of the commissioner of agriculture at the state capitol at Helena, and all files, records and property of the commission shall at all times be and remain therein. Neither the chairman nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(c) Each member of the commission shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents ($7.50) and his actual and necessary expenses incurred in the performance of any other duties provided by the commission.

(d) The commission shall adopt a seal of such design as it shall prescribe. Copies of all records and papers in the office of the commission, duly certified by the chairman and authenticated by the seal of the commission, shall be received in evidence in all courts with like effect as the original. All records of the commission shall be open to public inspection under such reasonable rules and regulations as it shall prescribe.

(e) All fees collected under the provisions of this act shall be deposited at least monthly with the state treasurer and said funds so deposited shall be apportioned as follows:

Five percent (5%) from each examination fee and twelve and one-half percent (12½%) from all other fees collected shall be deposited to the

credit of the general fund of the state to reimburse the state for its costs in administering this act.

The balance of said fees collected by the commission shall be deposited to the credit of the earmarked revenue fund and are hereby appropriated for the purposes of carrying out the provisions of this act. All expenditures from said funds by the commission under the provisions of this act shall be certified and approved by the chairman of the commission and paid by the appropriate state officials. Payment shall be made up on warrants appropriately drawn out of the proper funds. The commission shall provide a system of accounting which shall show the amount of money received therefor, and also an itemized statement of the expenses in connection therewith.

The commission shall have the power to make orders concerning the disbursement of the moneys in said earmarked revenue fund, including the payment of compensation and expenses of its members, clerks, employees, and board members.

(f) The commission shall have the power and authority to promulgate rules and regulations governing and regulating its internal operation and business meetings. The commission shall also have the power and authority to promulgate rules and regulations relating to the administration of this act but not inconsistent therewith.

66-1928. **Disposition of excess over $7,500.00.** All moneys, investments and credits in excess of seven thousand five hundred dollars ($7,500.00) remaining in the state treasury to the credit of the commission in the earmarked revenue fund at the close of the license year on December 31st of each year, after the payment of all expenses for that year, shall on or before the fifteenth day of the succeeding month be determined by the commission and shall be transferred from the earmarked revenue fund to the general fund to become available for general governmental purposes.

66-1929. **Licenses—applicants for licenses.**

(1) Licenses shall be granted only to individuals who are deemed by the commission to be of good repute and competent to transact the business of a broker or salesman in such manner as to safeguard the interests of the public.

(2) Each applicant for a broker's license shall be a citizen of the United States; shall be at least eighteen (18) years of age; shall have graduated from an accredited high school or shall have completed an equivalent education as determined by the commission; shall have been actively engaged as a licensed real estate salesman for a period of two (2) years or shall have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during such two (2) year period as determined by the commission, except that if the commission shall find that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the commission may waive this experience requirement; and must file an application for license with the commission. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency.

(3) Each applicant for a salesman's license shall be at least eighteen (18) years of age; shall have received credit for completion of two (2) years of full curriculum study at an accredited high school or shall have completed an equivalent education as determined by the commission; and must file an application for license with the commission. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The commission shall issue to each

licensed broker and to each licensed salesman a license and a pocket card in such form and size as the commission shall prescribe.

66-1930. **Written examination—contents—time and place—exemptions.**

In addition to proof of honesty, trustworthiness and good reputation, each applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the commission. The examination shall be given at least once each six months and at such places within the state as the commission shall prescribe. The examination for a salesman's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of this act. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license. An applicant who has failed twice in succession to pass the same class of examination shall be ineligible for a further examination until six months have passed; provided, however, that any resident of the state of Montana who was at the effective date of this act actively engaged in the real estate business as a licensed broker in this state may, upon complying with the other requirements for a broker's license, obtain a broker's license without examination if application therefor is made within ninety (90) days after the effective date of this act; and provided further that any person who has acted as a licensed salesman upon complying with the other requirements for a salesman's license may obtain a salesman's license without an examination if application is made within ninety (90) days after the effective date of this act.

66-1931. **License—issuance—suspension—revocation.** The commission shall have the full power to regulate the issuance of licenses and to revoke or suspend licenses issued under the provisions of this act.

66-1932. **License—delivery—display—pocket card.** The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each real estate salesman shall be delivered or mailed to the real estate broker by whom the real estate salesman is employed, and shall be kept in the custody and control of such broker. It shall be the duty of each broker to display his own license conspicuously in his place of business. The commission shall annually prepare and deliver a pocket card certifying that the person whose name appears thereon is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and including, on real estate salesman's cards only, the name and address of the broker employing such real estate salesman.

66-1933. **Bond of brokers and salesmen.** No license shall be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the commission in the sum of ten thousand dollars ($10,000.00), executed by a surety company duly authorized to do business in the state of Montana in a form approved by the commission and conditioned that the applicant, if and when licensed, shall conduct his business and himself in accordance with the provisions of this act, and further conditioned that the applicant, if and when licensed, shall pay, to the extent of ten thousand dollars ($10,000.00), all judgments recovered against him for loss or damage to any person arising in the course of the applicant's practice as a real estate broker or salesman. All bonds given by licensees under the provisions of this act, after approval, shall be filed and held in the office of the commission. If for any reason the bond of any broker or salesman shall become cancelled or void, the license of such broker or salesman shall be automatically suspended until such broker or salesman shall be again fully bonded as herein provided and said bond has been approved by the commission. If such suspension

is not terminated by rebonding and approval within thirty (30) days from the date of suspension, the license of such broker or salesman shall be automatically revoked.

66-1934. **Fees—when due.** To pay the expense of the maintenance and operation of the office of the commission and the enforcement of this act, a fee not to exceed the amount indicated below shall be charged by the commission and paid into the earmarked revenue fund for each of the following:

(1) For each examination, a fee not to exceed fifty dollars ($50.00).

(2) For each original resident broker's license issued, a fee not to exceed fifty dollars ($50.00).

(3) For each annual renewal of a resident broker's license, a fee not to exceed fifty dollars ($50.00).

(4) For each original nonresident broker's license issued, a fee not to exceed fifty dollars ($50.00).

(5) For each annual renewal of a nonresident broker's license, a fee not to exceed fifty dollars ($50.00).

(6) For each original salesman's license issued, a fee not to exceed twenty-five dollars ($25.00).

(7) For each annual renewal of a salesman's license, a fee not to exceed twenty-five dollars ($25.00).

(8) For each additional office or place of business, an annual fee not to exceed twenty-five dollars ($25.00).

(9) For each change of place of business or change of employer or contractual associate, a fee not to exceed twenty-five dollars ($25.00).

(10) For each duplicate license, where the original license is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars ($10.00).

(11) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars ($10.00).

The commission shall at its first meeting prepare a schedule of fees within the limits set by this section. The commission may from time to time revise such schedule of fees within the limits herein provided; provided, however, a fee once set for any one of the items herein for which a fee is charged cannot be increased or decreased until at least one year has passed since the fee for that particular item was last increased or decreased.

All annual fees shall be due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 will automatically cancel such license, but otherwise said license will remain in full force and effect continuously from the date of issuance, unless suspended or revoked by said commission for just cause.

66-1935. **Requirements for office—employment of salesmen—issuance and display of license.**

(1) Each resident licensed broker shall maintain a fixed office within this state. The original license of the broker and the original license of each salesman in the employ of or under contract with such broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license. In case of removal from the designated address, the licensee shall notify the commission before such removal or within ten days thereafter, designating the new location of this office, and paying the required fee, whereupon a license for the new location for the unexpired period shall issue.

(2) A salesman shall not be employed by or under contract to more than one licensed broker nor shall he perform services for any broker other than the one designated upon the license issued to the salesman.

Whenever a licensed salesman desires to change his employment or contractual relationship from one licensed broker to another, he shall notify the commission promptly in writing of the facts attendant thereon, pay the required fee, and return the license and the pocket card, and a new license and pocket card shall thereupon be issued. No salesman shall directly or indirectly work for or with a broker until he has been issued a license to work for or with that broker. Upon termination of a salesman's employment or contractual relationship he shall surrender his license and pocket card to his broker, who shall return them to the commission for cancellation.

(3) Only one license shall be issued to any salesman to be in effect at one time.

66-1936. **Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.**

(1) It is unlawful for any licensed broker to employ or compensate directly or indirectly any person performing any of the acts regulated by this act who is not a licensed broker or licensed salesman; provided, however, that a licensed broker may pay a commission to a licensed broker of another state so long as such nonresident broker has not conducted and does not conduct in this state any service for which a fee, compensation or commission is paid; provided, further, this subsection shall not limit the provisions of the subsection following.

(2) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in another state and who has been duly licensed in such other state to conduct such business in that state, may obtain a license as a broker in this state by complying with all provisions of this act; provided, however, that this section shall apply only to those brokers of other states which offer the same privileges to the licensed brokers of this state. Such nonresident licensee need not maintain a place of business within this state. The commission may license such nonresident broker without examination, provided that he files with the said commission a duly authorized or certified copy of the license issued to such nonresident for the conducting of such business in any other state, and by paying to the said commission the same license fee as is herein provided for the obtaining of a broker's license in this state. The commission may in its discretion refuse to issue a broker's license to an applicant who is not a resident of this state.

(3) Every nonresident broker shall file an irrevocable written consent that legal actions arising out of any commenced or completed transaction may be commenced against such nonresident broker in any county of this state which may be appropriate and designated by section 93-2904; and such consent shall provide that service of summons in any such action may be served upon the chairman of the commission, for and on behalf of said nonresident broker, and such service shall be held to be sufficient to give the court jurisdiction over such nonresident broker and his salesman or agent conducting any such transaction in any county. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. Any service of process or pleading made upon the commission shall be by duplicate copies, one of which shall be filed in the office of the commisison and the other forwarded by registered mail to the last known principal address of the nonresident broker against whom said process or pleading is directed. In any action in which service of process or pleading is made upon the commission no default shall be taken except upon certification of the chairman of the commission that a copy of said process or pleading was mailed to the defendant as herein provided. In actions in which service of process or pleading is made upon the commission, defaults may be entered and default judgments taken in the manner provided as in the case where publication of summons is had: provided the method of service of process or pleadings provided for by this section shall in no way limit section 93-2702, Revised Codes of Montana, 1947 (Rule 4, M.R. Civ. P.).

66-1937. **Grounds for refusal—suspension or revocation of license.** The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any real estate broker or any real estate salesman and shall have the power to revoke or suspend any license issued under this act whenever the broker or salesman has been found guilty by a majority of the commission of any of the following practices:

(1) Intentionally misleading, untruthful or inaccurate advertising, whether printed or by radio, display or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies or services of the business conducted;

(2) Making any false promises of a character likely to influence, persuade or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using any other trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit any money coming into his possession belonging to others;

(6) Accepting, giving or charging any undisclosed commission, rebate or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and undisclosed principal in any transaction;

(8) Guaranteeing or authorizing or permitting any person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on any terms other than those authorized by the owner or his authorized agent;

(10) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent upon the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange or lease of real property directly with an owner or lessee if he knows that such owner has a written outstanding contract in connection with such property, granting an exclusive agency to another broker;

(13) Soliciting, selling or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of any written instrument to any party executing the same at the time of its execution;

(16) Paying a commission in connection with any real estate sale or transaction to any person who is not licensed as a real estate broker or real estate salesman under this act;

(17) Intentionally violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, any deposit money or other money entrusted to him as salesman by any person;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman;

(20) Conviction of a felony.

66-1938. **Repealed.**

66-1938.1. **Hearings—procedure.**

(1) Notice of hearing upon complaint. When the commission shall have investigated an application for a real estate broker's or salesman's license or investigated the actions of a real estate broker or salesman upon the sworn complaint in writing of any person, or upon its own motion, and such investigation shall have revealed reasonable grounds for denying such application, or reasonable indication of a violation of any of the provisions of this act as cause for revoking or suspending the license, set the matter for hearing and give twenty (20) days' notice of hearing the same, in writing, to the applicant or licensee, by registered mail, return receipt requested, addressed to the last known address of such applicant or licensee, and if such licensee is a real estate salesman, or such applicant seeks a salesman's license, such notice shall also be sent to the broker employing him or in whose employ he seeks to enter, at such broker's last known business address by registered mail, return receipt requested. If a written complaint or charges have been filed with the commission or prepared by it, a copy thereof shall be attached to and sent with each of the notices. The notice shall be substantially in the following form:

BEFORE THE MONTANA REAL ESTATE COMMISSION

In the Matter of the Application of John Doe for a Real Estate Broker's License) or (Charge Against John Doe, a Licensed Real Estate Broker, for Violation of the Real Estate License Act of 1963).	NOTICE OF HEARING

THE STATE OF MONTANA SENDS GREETINGS TO:

_____

(1) YOU ARE HEREBY NOTIFIED that the Montana Real Estate Commission has investigated your application for a real estate broker (or salesman), (hereto attached) alleging as follows (or has charged you with the following violation): _____

_____

_____

_____

_____

That this commission has investigated said complaint (or has of its own motion investigated your action as a real estate broker-salesman) and found reasonable cause to set aside matter for hearing at _____ o'clock _____ .M., on _____, 19 _____, at _____, Montana. You shall respond to the charges above (or hereto attached) by filing your written answer to the charges with the commission in triplicate within fourteen (14) days from the date of mailing of this notice.

(and)

You shall appear at the time and place above mentioned and produce what evidence and witnesses you may have. If you fail to appear at the hearing, and good cause for continuance is not shown, the commission will render its decision upon the evidence presented to it.

Dated at Helena, Montana, this _____ day of _____, 19____.

MONTANA REAL ESTATE COMMISSION

_____
Chairman

The licensee or applicant shall file an answer to the charges within fourteen (14) days after notice has been mailed by commission. Upon receipt of the written answer of the person charged, the chairman of the commission will send a copy of said answer to the person or persons presenting the sworn complaint, if any, and one copy to each member of the commission.

Commission hearing and decision—appeal.

(1) The hearing may be held in the offices of the commission in Helena, Montana, or elsewhere, as the commission shall order. All hearings shall be open to the public and conducted informally insofar as an orderly presentation will permit. Any interested party shall have the right to be heard in person or by counsel, and any interested party or a member of the commission may examine or cross-examine any witness at the discretion of the chairman. The chairman may administer oaths, examine the witnesses and take any evidence he deems pertinent to the determination of the charges. The commission shall consider only that evidence presented or introduced at the hearing, but shall not be bound by any laws of evidence of this state. All witnesses must be sworn before testifying. A full and complete record shall be kept of all proceedings and all testimony shall be recorded, but need not be transcribed unless the matter be appealed. Four (4) members of the commission shall constitute a quorum, one of whom must be the chairman. No member shall sit as a member of the commission to hear any matter in which he has an interest, nor shall he represent any interested party or witness at the hearing. Any interested party may challenge any member of the commission in writing, served upon the chairman, five (5) days in advance of the scheduled time of any hearing stating the reasons therefor, and if the commission shall find merit in the challenge, it shall disqualify the challenged member. A decision of a majority of the commission members sitting shall constitute the decision of the commission on any issue presented for its decision. The commission shall have continuing jurisdiction over all matters heard by it, to examine additional evidence or to hear additional testimony, and to revise, modify, alter, amend or reverse all orders, findings and determinations made by it at any time and shall not lose jurisdiction unless and until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed therein as provided by section 66-1939. The commisison may postpone or continue a hearing from time to time as it deems necessary. As soon as possible after the hearing, the commission shall render its decision and order in writing, stating its finding and conclusions signed by all commission members joining in the decision. If an interested party fails to appear at the hearing after due notice, and good cause for continuance is not shown, the commission shall render its decision upon the evidence presented to it. Copies of such decision shall be served upon all interested parties by registered mail, return receipt requested, and shall be kept on file in the office of the commission in Helena, Montana, open to public inspection. Any witness subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the district

court of this state in civil actions, but the payment of such fees and mileage must be paid out of and kept within the limits of the funds created. Depositions may also be taken and used as in civil cases in the district courts. In the absence of an appeal, the decision of the commission shall become final and take effect thirty (30) days after service of the decision upon all interested parties appearing. If an appeal is taken to a district court or to the supreme court, and the decision of the commission is reversed or in any way modified, the commission will amend its decision to conform to the ruling of the court no later than the date upon which the right to appeal or petition for rehearing by the court shall expire.

Subpoena—enforcement by warrant of arrest.

(3) Upon written application from any interested party to a hearing or upon the request of any member of the commission, or at his own discretion, the chairman may issue a subpoena requiring the attendance and testimony of any witness present in the state of Montana, and he may further demand of such a witness that he produce any papers, books, records or documents within the power of such witness to obtain, the subpoena to be substantially in the following form:

BEFORE THE MONTANA REAL ESTATE COMMISSION

In the Matter of the (Application of John Doe for a Real Estate Broker's License) or (Charge Against John Doe, a Licensed Real Estate Broker, for Violation of the Real Estate License Act of 1963).	SUBPOENA (DUCESTECUM)

THE STATE OF MONTANA SENDS GREETINGS TO:

_____

Pursuant to the Real Estate License Act of 1963, as amended,

WE COMMAND YOU, that all and singular, business and excuses being set aside, you appear and attend before the Montana Real Estate Commission at (its offices in the State Capitol Building, in Helena, Montana (at _____, Montana), at _____ o'clock _____ .M., on the _____ day of _____, 19 _____, then and there to testify as a witness in the above-entitled matter, (and that you bring with you and there produce the following papers, books, records or documents now in your custody or under your control, namely:

_____

_____).

GIVEN at Helena, Montana, this _____ day of _____, 19 _____.

MONTANA REAL ESTATE COMMISSION

_____

Chairman

All subpoenas issued shall be served as provided in Rule 45(c), Montana Rules of Civil Procedure. If a witness shall fail or refuse to attend a hearing, or fail to produce the papers, books, records or other documents demanded of him, in accordance with any subpoena so issued and

served, the chairman, upon proof of service of the subpoena, may issue a warrant to the sheriff of the county where the witness may be, to arrest the witness and bring him before the commission where his attendance is required, together with any papers, books, records or documents demanded in such subpoena. Such warrant shall be substantially in the following form:

BEFORE THE MONTANA REAL ESTATE COMMISSION

In the Matter of the (Application of John Doe for a Real Estate Broker's License) or (Charge Against John Doe, a Licensed Real Estate Broker, for Violation of the Real Estate License Act of 1963).

WARRANT OF ARREST

THE STATE OF MONTANA, TO ANY SHERIFF, CONSTABLE, MARSHAL, HIGHWAY PATROL OFFICER OR POLICE OFFICER IN THIS STATE:

Subpoena having been issued by the chairman of the Montana Real Estate Commission pursuant to the Real Estate License Act of 1963, as amended, commanding the attendance of the above-named _____ _____ to appear before said commission at (its offices in the Capitol Building in Helena, Montana) at _____ o'clock _____.M., on the _____ day of _____, 19_____, (and that he bring with him certain named papers, books, records or documents) and that the above-named _____ having failed and refused to appear at the said time and place (or failed to produce the papers, books, records and documents demanded),

YOU ARE THEREFORE COMMANDED FORTHWITH to arrest the above-named _____ and bring him before me at (the offices of the Montana Real Estate Commission in the State Capitol Building in Helena, Montana) (together with the papers, books, records and documents demanded), at _____ o'clock _____.M., on the _____ day of _____, 19_____.

Dated at Helena, Montana, this _____ day of _____, 19_____.

MONTANA REAL ESTATE COMMISSION

_____
Chairman

Where, in any proceeding before the commission, any witness shall fail or refuse to testify, the giving of his testimony may be enforced in the same manner as courts of competent jurisdiction enforce testimony of witnesses in civil cases in the courts of this state.

Definitions.

(4) As used in this section, the term "interested party" means:

(a) The party or parties charged with any violation of this act or an

applicant for issuance of a real estate broker's or salesman's license, as the case may be.

(b) All partners or business associates of the party or parties charged, or of the applicant, as the case may be, and all officers, directors and stockholders of any corporation through or for which the party or parties charged sell real estate as defined in this act.

(c) If the party charged is a broker, then any salesman employed by him; if a salesman, then the broker employing him.

Sections 66-1938 and 66-1942, R.C.M., 1947, are hereby repealed.

66-1939. **Appeal to court—supersedes—bond.**

(1) Any person aggrieved shall have the right of appeal from any adverse ruling, order or decision of the commission to the district court of the county in which he resides or maintains his business, or in the county where the hearing was held, within thirty (30) days from the service of notice of the action of the commission upon the parties thereto.

(2) Notice of appeal shall be filed in the office of the clerk of the court, which shall issue a writ of certiorari directed to the commission, commanding it, within ten (10) days after service thereof, to certify and file with the court a certified copy of the records of the case in which the appeal has been taken, including all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings, conclusions, and orders therein. The appeal shall be heard in due course without a jury by the court, which shall review the record, and after hearing thereon, make its determination of the cause.

(3) Any person taking an appeal to the district court shall post a bond in the amount of three hundred dollars ($300.00) for the payment of any costs which may be taxed against him.

(4) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission upon conditions determined by the court. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(5) An appeal may be taken to the supreme court from a district court by the commission or by any person aggrieved from an adverse ruling order or decision of the district court. Such appeal shall be taken within sixty (60) days after the order is made and entered in the minutes of the court filed with the clerk. The method and procedure of taking an appeal, together with the amount of the undertaking or deposit on appeal, shall be governed by Chapter 80 of Title 93, Revised Codes of Montana, 1947.

(6) Any order, rule or decision of the commission shall not take effect until after the time for appeal has expired. In the event an appeal is taken by a licensee or applicant, the appeal shall not act as a supersedes unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

66-1940. **Penalties—legal actions.**

(1) Any individual acting as a broker or salesman without a license or while his license is suspended or revoked, or any person who violates any provision of this act, shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) or by imprisonment for a term not to exceed ninety (90) days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine or not less than five

hundred dollars ($500.00) or more than two thousand dollars ($2,000.00) or by imprisonment for a term not to exceed six (6) months, or both.

(2) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

(3) Any person sustaining damages by failure of a real estate broker or real estate salesman to comply with the provisions of this act, shall have the right to commence an action in his own name against the real estate broker and his surety, or the real estate salesman and his surety, or both the broker and any salesman employed directly or indirectly by such broker and their respective sureties, for the recovery of any damages sustained as the result of any act specified in section 66-1937 herein or as a result of the failure of the real estate broker or real estate salesman to comply with the provisions of this act. In all cases where suit is brought against the broker or the salesman, and his surety, the court shall, upon entering judgment for the plaintiff, allow as a part of the costs of suit a reasonable amount as attorney's fees.

All penalties provided for by this section may be collected from the broker's and salesman's bonds provided by section 66-1933.

66-1941. **Action for compensation.** Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman or authorized to act as a broker under the provisions of this act at the time the alleged cause of action or claim arose.

66-1942. **Repealed.**

66-1943. **Real estate meetings and clinics open to all licensees.** (a) The commission is authorized to conduct, hold or assist in conducting or holding real estate clinics, meetings, courses or institutes and to incur the necessary expenses in connection therewith.

(b) The commission is authorized to assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

66-1944. **Attorney for commission.** The attorney general of the state shall render to the commission opinions on all questions of law relating to the interpretation of this act or arising in the administration thereof. The attorney general shall further act as attorney for said commission in all actions and proceedings brought by or against it under or pursuant to any of the provisions of this act; provided, all fees and expenses of the attorney general acting in such capacity shall be paid out of commission moneys in the earmarked revenue fund.

66-1945. **Publication of directory.** The commission shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data as the commission may determine to be in the interest of real estate licensees and the public.

66-1946. **No repeal of section 94-1822.** Nothing contained herein shall be construed to amend, modify or repeal section 94-1822 of the Revised Codes of Montana of 1947. This act shall be construed to be supplemental to said section 94-1822.

DEFINITIONS AND NATURE OF PROPERTY

Section 67-208. Land.
67-211. Appurtenances.

67-208. **Land.** Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

67-211. **Appurtenances.** A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across the land of another.

CONDITIONS AND LIMITATIONS ON OWNERSHIP

Section 67-408. Leases of agriculture and other lands.
67-409. Leases of city or town lots for over seventy-five years, void.
67-415. Increase of property.

67-408. **Leases of agriculture and other lands.** No lease or grant of agricultural lands for agricultural purposes for a longer period than ten (10) years, in which shall be reserved any rent or service of any kind, shall be valid provided, that the foregoing shall not limit or affect leases with option to purchase made by the farm security administration of the United States department of agriculture, but leases or grants of lands, lying outside the limits of cities and towns, for any purpose, other than for agricultural purposes, may be for such period as may be agreed to by the parties to such leases or grants.

67-409. **Leases of city or town lots for over seventy-five years, void.** No lease or grant of any town or city lot for a period longer than seventy-five years in which shall be reserved any rent or service of any kind shall be valid.

67-415. **Increase of property.** The owner of a thing also owns all of its products and accessions.

PROPERTY

Real Property and Estates Therein

Section 67-501. Real property—how governed.
67-502. Enumeration of estates.
67-503. What estate a fee simple.
67-504. Estates tail abolished.
67-506. Freehold estates—chattels real—chattels interests.
67-507. Estate for life of third person—when a freehold, etc.
67-509. Reversion.
67-510. Remainders.
67-523. Notice of terminating tenancy at will.
67-524. Effect of notice.

67-501. **Real property—how governed.** Real property within this state is governed by the law of this state, except where the title is in the United States.

67-502. **Enumeration of estates.** Estates in real property, in respect to the duration of their enjoyment, are either:

1. Estates of inheritance or perpetual estates;

2. Estates for life;

3. Estates for years;

4. Estates from year to year, quarter to quarter, month to month, week to week, day to day, and for other indefinite and unascertained durations of enjoyment whatsoever, except estates or tenancies at will; or,

5. Estates at will.

67-503. **What estate a fee simple.** Every estate of inheritance is a fee, and such estate, when not defeasible or conditional, is a fee simple or an absolute fee.

67-504. **Estates tail abolished.** Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple, and if no valid remainder is limited thereon, is a fee simple absolute.

67-506. **Freehold estate—chattels real—chattels interests.** Estates of inheritance and for life are called estates of freehold; estates for years and estates embraced by the provisions of the fourth division of section 67-502, are chattels real; and estates at will are chattels interests, but not liable as such to sale on execution.

67-507. **Estate for life of third person—when a freehold, etc.** An estate, during the life of a third person, whether limited to heirs or otherwise is a freehold.

67-509. **Reversion.** A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

67-510. **Remainders.** When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

67-523. **Notice of terminating tenancy at will.** A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed in Title 93, to remove from the premises within a period of not less than one (1) month, to be specified in the notice, but none of the estates or tenancies embraced by the provisions of division four (4) of section 67-502 is a tenancy or estate at will.

67-524. **Effect of notice.** After such notice has been served, and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession.

ACQUISITION OF PROPERTY BY TRANSFER—GRANTS AND THEIR INTERPRETATION

Section 67-1509. Delivery necessary.
67-1510. Date.
67-1511. Delivery to grantee is necessarily absolute.
67-1512. Delivery in escrow.
67-1513. Surrendering or canceling grant does not reconvey.
67-1514. Constructive delivery.
67-1522. What title passes.

67-1509. **Delivery necessary.** A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor.

67-1510. **Date.** A grant duly executed is presumed to have been delivered at its date.

67-1511. **Delivery to grantee is necessarily absolute.** A grant cannot

be delivered to the grantee conditionally. Delivery to him, or to his agent as such, is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery is made.

67-1512. **Delivery in escrow.** A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.

67-1513. **Surrendering or canceling grant does not reconvey.** Redelivering a grant of real property to the grantor, or canceling it, does not operate to retransfer the title.

67-1514. **Constructive delivery.** Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

67-1522. **What title passes.** A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has, unless a different intention is expressed or is necessarily implied.

TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

Section 67-1601. Requisites for transfer of certain estates.
67-1602. Form of grant.
67-1602.1. Joint tenancy created by direct conveyance.
67-1603. Grant by married woman—how acknowledged.
67-1605. Attorney in fact—how must execute for principal.
67-1606. Change of former name of owner.
67-1607. What easements pass with property.
67-1608. When fee simple is presumed to pass.
67-1609. Subsequently acquired title passes by operation of law.
67-1610. Grant—how far conclusive on purchasers.
67-1616. Implied covenants.
67-1617. What the term "encumbrances" embraces.

67-1601. **Requisites for transfer of certain estates.** An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

67-1602. **Form of grant.** A grant of an estate in real property may be made in substance as follows:

"I, A B, in consideration of _____ dollars now paid, grant to C D all the real property situated in _____ county, state of Montana, bounded (or described) as follows: (Here insert description or, if the land sought to be conveyed has a descriptive name, it may be described by the name, as, for instance, 'The Norris Ranch').

Witness my hand this _____ day of _____, 19____.

A. B."

67-1602.1. **Joint tenancy created by direct conveyance.** A joint tenancy as to any interest in real property may be established by the owner thereof, by designating in the instrument of conveyance or transfer, the names of such joint tenants including his own, without the necessity of any transfer or conveyance to or through a third person.

67-1603. **Grant by married woman—how acknowledged.** No estate in the real property of a married woman passes by any grant purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by her in the manner prescribed by sections 39-108 and 39-113.

67-1605. **Attorney in fact—how must execute for principal.** When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

67-1606. **Change of former name of owner.** Any person in whom the title of real estate is vested, who shall afterwards, from any cause, have his or her name changed, shall, in any conveyances of said real estate so held, set forth the name in which he or she derived title to said real estate, and a failure to comply with the provisions of this section shall subject any such person to a penalty of fifty dollars, to be collected by the county attorney of the county in which the real estate is situated, and by him paid into the treasury of said county for the benefit of the common schools thereof.

67-1607. **What easements pass with property.** A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

67-1608. **When fee simple is presumed to pass.** A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

67-1609. **Subsequently acquired title passes by operation of law.** Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

67-1610. **Grant—how far conclusive on purchasers.** Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

67-1616. **Implied covenants.** From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance.

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor, or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

67-1617. **What the term "encumbrances" embraces.** The term "encumbrances" includes taxes, assessments, and all liens upon real property.

SALE OR LEASE OF SUBDIVIDED LANDS

Section 67-2101. Definition of terms.
67-2102. Rules and regulations.
67-2103. Notice of intention to offer subdivided lands—contents of notice.
67-2104. Fee for filing of notice of intention.
67-2105. Additional information required by commissioner.
67-2106. Fee for filing of questionnaire—disposition of fees.
67-2107. Investigation of subdivisions—powers of commissioner.
67-2108. Findings not to be used in advertising.
67-2109. Blanket encumbrance defined.
67-2110. Required provisions for protection of purchasers and lessees.
67-2111. Contracts for sale of real property in subdivisions—required contents.
67-2112. Notice of multiple sales or leases to one purchaser or lessee.
67-2113. Inspection of records by commissioner—notice of change of address or change of depository.
67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings.
67-2115. Accrual of cause of action for violation.
67-2116. Misdemeanors enumerated.

67-2101. **Definition of terms.** The word "subdivision" and "subdivided lands" as used in this act shall mean any tract of land which is hereafter divided into five (5) or more parcels, any parcel of which is less than five (5) acres in size, and which is offered for sale or lease outside the state of Montana.

67-2102. **Rules and regulations.** The state real estate commissioner hereafter referred to as the "commissioner" may make and adopt such rules and regulations as are reasonably necessary for the enforcement of this act.

67-2103. **Notice of intention to offer subdivided lands—contents of notice.** Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent or subdivider shall notify the state real estate commissioner in writing of his intention to sell or lease such offering.

The notice of intention shall contain the following information.

(a) The name and address of the owner.

(b) The name and address of the subdivider.

(c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads.

(d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon.

(e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used.

(f) A true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

(g) Copies of any and all advertising, information, promotion brochures or similar material depicting the existing property or as it is to

exist, which might cause or tend to induce purchase of the said property, or an interest therein, when said material is or might be circulated outside of this state.

(h) Such other information as the owner, his agent or subdivider, may desire to present.

67-2104. **Fee for filing of notice of intention.** A filing fee of fifty dollars ($50) shall accompany the notice of intention provided for in section 3[67-2103] of this act.

67-2105. **Additional information required by commissioner.** After receiving the notice of intention, the commissioner may require such additional information concerning the project as he deems necessary, for which purpose he may prepare a questionnaire for the owner, his agent or subdivider, to answer.

67-2106. **Fee for filing of questionnaire—disposition of fees.** The questionnaire as provided for in section 5 [67-2105] of this act shall be accompanied by a filing fee of one hundred dollars ($100). All fees and charges provided for by this act shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in the administration of this act when such claims have been approved as provided by law.

67-2107. **Investigation of subdivisions—powers of commissioner.** The state real estate commissioner may investigate any subdivision being offered for sale or lease under the provisions of this act. For the purpose of such investigation, the commissioner may:

1. Use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein.

2. Require reports prepared by competent authorities as to any hazard to which the subdivisions may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.

3. Require evidence of compliance with the requirements of appropriate authorities.

4. Require an inspection of the subdivision to be made.

67-2108. **Findings not to be used in advertising.** It shall be unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the commissioner as provided for in this act.

67-2109. **Blanket encumbrance defined.** For the purpose of this act, a blanket encumbrance shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

67-2110. **Required provisions for protection of purchasers and lessees.** It shall be unlawful for the owner or subdivider to offer to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(a) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the state real estate commissioner until: 1. The title or other interest contracted for whether it be

title of record, equitable or other interest, is delivered to such purchaser or lessee and until: 2. A proper release is obtained from any such blanket encumbrance, or: 3. Either the owner, subdivider, purchaser or lessee defaults in his undertaking, in which event the moneys shall be paid to the party who is not in default and is entitled thereto.

(b) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the commissioner until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(c) A bond in the amount of twenty-five hundred dollars ($2,500) to the state of Montana is furnished to the state real estate commissioner for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to such terms as may be approved by the commissioner, who shall provide for the return of moneys paid or advanced by any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained; provided, however, that if such purchaser or lessee, by reason of default, is not entitled to the return of such moneys, or any portion thereof, then such bond shall be exonerated to the extent of the amount of such moneys to which such purchaser or lessee is not entitled.

67-2111. **Contracts for sale of real property in subdivisions—required contents.** Every sales contract relating to the purchase of real property in a subdivision subject to the provisions of this act, shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

67-2112. **Notice of multiple sales or leases to one purchaser or lessee.** When five or more lots or parcels within a subdivision subject to the provisions of this act, are optioned, leased or sold to another, or, when an interest therein is acquired by one owner, lessee or optionee, the state real estate commissioner shall be notified by the parties to the transaction.

67-2113. **Inspection of records by commissioner—notice of change of address or change of depository.** Records of the sale or lease of parcels within a subdivision subject to the provisions of this act, shall be subject to inspection by the state real estate commissioner and the commissioner shall be notified of any change of address affecting the location of the owner's, subdivider's or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

67-2114. **Orders to desist and refrain—prohibition of sales and leases—hearings.** Whenever in the opinion of the state real estate commissioner any person has or is violating, or is about to violate, any of the provisions of this act, the commissioner may order the person to desist and refrain from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees of lots or parcels in a subdivision, the commissioner may issue an order prohibiting the sale or lease, or either, of the property in this state. If, after such an order is made, a request for a hearing by the commissioner is filed in writing and a hearing is not held within sixty (60) days thereafter, the order is rescinded.

The hearing upon the cease, desist and refrain order shall be held in the same manner and under the same requirements and conditions as is provided in section 66-1917 Revised Codes of Montana, 1947.

67-2115. **Accrual of cause of action for violation.** For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal involving any violation of this act, the cause of action shall be deemed to have accrued not earlier

than the time of recording with the county recorder of the county in which the property sold or leased in violation of this act and which describes a lot or parcel so wrongfully sold or leased.

This section does not prohibit the maintenance of such action at any time during the recording of such instruments.

67-2116. **Misdemeanors enumerated.** The following acts are misdemeanors:

(a) The willful violation or failure to comply with any of the provisions of this act.

(b) The willful violation, failure, omission or neglect to obey, observe or comply with any order, permit, decision, demand or requirement of the state real estate commissioner.

(c) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner or subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this act.

(d) The advertising for sale or lease in this state of a parcel in an out-of-state subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-state subdivision who has not complied with the provisions of this act, to offer within this state subdivided lands.

FOREIGN LAND SALES PRACTICES ACT

Section 67-2117. Definitions.
67-2118. Administrative agency.
67-2119. Exemptions.
67-2120. Prohibitions on dispositions of interests in subdivisions.
67-2121. Application for registration.
67-2122. Public offering statement.
67-2123. Inquiry and examination.
67-2124. Notice of filing and registration.
67-2125. Annual report.
67-2126. General powers and duties.
67-2127. Investigations and proceedings.
67-2128. Cease and desist orders.
67-2129. Revocation.
67-2130. Judicial review.
67-2131. Penalties.
67-2132. Civil remedy.
67-2133. Jurisdiction.
67-2134. Interstate rendition.
67-3135. Service of process.
67-3136. Short title.

67-2117. **Definitions.** When used in this act, unless the context otherwise requires:

1. "Disposition" includes sale, lease, assignment, or any other transaction concerning a subdivision, if undertaken for gain or profit;

2. "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;

3. "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two (2) or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

4. "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land;

5. "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner;

6. "Subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five (5) or more lots, parcels, units, or interests and also includes any land whether contiguous or not if five (5) or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

67-2118. **Administrative agency.** This act shall be administered by the Montana real estate commission which hereinafter is called the "agency." The agency shall charge a fee, not to exceed five hundred dollars ($500) for each application for registration of subdivided lands received by it in accordance with this act, which shall be paid into the earmarked revenue fund to the credit of the agency and is hereby appropriated for the purposes of carrying out the provisions of this act. All expenditures of said funds by the agency under the provisions of this act shall be certified and approved by the chairman of the agency and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The agency shall provide a system of accounting which shall show the amount of money received therefor, and also an itemized statement of expenses in connection therewith. The agency shall have the power to make orders concerning the disbursement of the moneys in said earmarked revenue fund, including the payment of compensation and expenses of its employees and board members.

67-2119. **Exemptions.**

(a) Unless the method of disposition is adopted for the purpose of evasion of this act, the provisions of this act do not apply to offers or dispositions of an interest in land:

1. By a purchaser of subdivided lands for his own account in a single or isolated transaction;

2. If fewer than five (5) separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve (12) months;

3. On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two (2) years from date of disposition;

4. To persons who are engaged in the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging and do engage in the business of construction of buildings for resale;

5. Pursuant to court order;

6. By any government or government agency;

7. As cemetery lots or interests.

(b) Unless the method of disposition is adopted for the purpose of evasion of this act, the provisions of this act do not apply to:

1. Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;

2. Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

3. A subdivision as to which the plan of disposition is to dispose to ten (10) or fewer persons;

4. A subdivision as to which the agency has granted an exemption as provided in section 10;

5. Offers or dispositions of securities currently registered with the investment commissioner of this state; and,

6. Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such in-

terests are regulated as securities by the United States or by the investment commissioner of this state.

67-2120. **Prohibitions on dispositions of interests in subdivisions.** Unless the subdivided lands or the transaction is exempt by 67-2119:

1. No person may offer or dispose in this state of any interest in subdivided lands located without this state prior to the time the subdivided lands are registered in accordance with this act;

2. No person may dispose of any interest in subdivided lands without this state unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

67-2121. **Application for registration.**

(a) The application for registration of subdivided lands shall be filed as prescribed by the agency's rules and regulations and shall contain the following documents and information:

1. An irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under this act against the applicant or his personal representative;

2. A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests and the relation of the subdivided lands to existing streets, roads, and other offsite improvements;

3. The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

4. The applicant's name and address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

5. The name, address, and principal occupation for the past five (5) years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty (30) days of the filing of the application;

6. A statement, in a form acceptable to the agency, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty (30) days of the date of application by a title opinion of an attorney licensed to practice in this state, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the agency;

7. Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

8. Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

9. If there is a lien or encumbrance affecting more than one (1) lot, parcel, unit, or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

10. Copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided lands;

11. A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;

12. A statement of the existing provisions for access, sewage, disposal,

water, and other public utilities in the subdivision; a statement of the improvements to be installed; the schedule for their completion; and a statement as to the provisions for improvement maintenance;

13. A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;

14. The proposed public offering statement;

15. Any other information, including any current financial statement, which the agency by its rules or regulations requires for the protection of purchasers.

(b) If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

(c) The subdivider shall immediately report any material changes in the information contained in an application for registration.

67-2122. **Public offering statement.**

(a) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and regulations and shall include the following:

1. The name and principal address of the subdivider;

2. A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;

3. The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

4. A statement of the use for which the property is offered;

5. Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;

6. Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

(b) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires it.

(c) The agency may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the agency and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

67-2123. **Inquiry and examination.** Upon receipt of an application

for registration in proper form, the agency shall forthwith initiate an examination to determine that:

1. The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

2. There is reasonable assurance that all proposed improvements will be completed as represented;

3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the agency in its rules and regulations and afford full and fair disclosure;

4. The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten (10) years and has not been subject to any injunction or administrative order entered by any authority within the past ten (10) years restraining a false or misleading promotional plan involving land dispositions;

5. The public offering statement requirements of this act have been satisfied.

67-2124. **Notice of filing and registration.**

(a) Upon receipt of the application for registration in proper form, the agency shall issue a notice of filing to the applicant. Within ninety (90) days from the date of the notice of filing, the agency shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety (90) days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(b) If the agency affirmatively determines, upon inquiry and examination, that the requirements of section 67-2123 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(c) If the agency determines upon inquiry and examination that any of the requirements of section 67-2123 has not been met, it shall notify the particulars specified within ten (10) days. If the requirements are not met within the time allowed the agency shall enter an order rejecting the registration, which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty (20) days during which time the applicant may petition for reconsideration and is entitled to a hearing.

(d) No subdivided lands shall be registered or deemed registered until the subdivider shall have filed a bond with the agency running to the state of Montana, executed by a surety company authorized to do business in this state, on a form approved by the agency, conditioned that the subdivider shall pay, to the extent of ten thousand dollars ($10,000.00) for each occurrence, any judgment recovered against him for loss or damage to any person arising out of the sale or disposition in Montana of any subdivided lands situate out-of-state.

67-2125. **Annual report.**

(a) Within thirty (30) days after each annual anniversary of an order registering subdivided lands, the subdivider shall file a report in the form prescribed by the rules and regulations of the agency. The report shall reflect any material changes in information contained in the original application for registration.

(b) The agency may permit the filing of annual reports within thirty (30) days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

67-2126. **General powers and duties.**

(a) In the administration of this act, the agency shall have all of the powers and duties as stated in subsections (b), (c) and (4) of section 66-1927, R.C.M., 1947. The agency shall adopt reasonable rules and regulations relating to the administration of this act, but not inconsistent therewith, which may be amended or repealed. The rules and regulations shall include but need not be limited to:

1. Provisions for advertising standards to assure full and fair disclosure;

2. Provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

3. Provisions for operating procedures; and,

4. Other rules and regulations necessary and proper to accomplish the purpose of this act.

(b) The agency by rule or order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

(c) If it appears that a person has engaged or its about to engage in an act or practice constituting a violation of a provision of this act or a rule or order hereunder, the agency, with or without prior administrative proceedings, may bring an action in any district court of this state to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The agency is not required to post a bond in any court proceedings.

(d) The agency may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the agency notice of the suit and copies of all pleadings.

(e) The agency may:

1. Accept registrations filed in other states or with the federal government;

2. Contract with similar agencies in this state or other jurisdictions to perform investigative functions;

3. Accept grants in aid from any source.

(f) The agency shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

(g) The agency may exempt a subdivision of twenty-five (25) or fewer lots, parcels, units, or interests from the provisions of this act if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is situated.

67-2127. **Investigations and proceedings.**

(a) The agency may:

1. Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules, regulations and forms hereunder;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the agency determines, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any investigation or proceeding under this act, the agency or any officer designated by rule or regulation may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the agency may apply to any district court of this state for an order compelling compliance.

(d) Any person directly affected by any ruling, determination, or decision of the agency or any officer or employee thereof, may appeal the same to the Montana real estate commission for hearing and review by serving written notice of appeal upon the commission chairman within fifteen (15) days after such rule, determination or decision is mailed to, or served upon, such person. Notice of appeal shall state specifically the matters that the appellant desires reviewed, but shall not act as a stay unless otherwise provided by this act. Upon receipt of notice of appeal, the chairman shall serve upon the appellant notice of time and place of said hearing not less than fifteen (15) days prior to the date of hearing, to be held in the offices of the commission in Helena, Montana, or elsewhere as the chairman shall order. All hearings shall be open to the public and conducted informally insofar as an orderly presentation will permit. The appellant, the commission chairman, or any officer or employee of the agency, or a member of the commission, may be represented by counsel and may introduce any material evidence or examine or cross-examine any person present as a witness. The commission shall consider all evidence presented or introduced under oath at the hearing and all other pertinent documents, papers or records available to it, and shall not be bound by any laws of evidence of this state. A full and complete record shall be kept of all proceedings and all testimony shall be recorded, but need not be transcribed unless the matter be further appealed. Four (4) members of the commission shall constitute a quorum, one of whom must be the chairman. No member of the commission shall hear any matter in which he has a personal interest, nor shall he represent any person or witness at the hearing. Any party to the proceedings may challenge any commissioner in writing, served upon the chairman of the commission five (5) days in advance of any scheduled appeal hearing, stating the reasons therefor, and if the commission shall find merit in the challenge, it shall disqualify the challenged member. If disqualification reduces the commission membership to less than four (4), the remaining members shall appoint disinterested people to fill the vacancies to provide a four-man hearing commission. The commission may postpone or continue a hearing from time to time as it deems necessary. As soon as possible after the hearing, the commission shall render its decision in writing, stating its findings and conclusions and showing the names of all members of the commission joining in the decision. The decision of any three (3) commissioners shall constitute the decision of the commission on any issue presented for its decision. If the appellant or his representative fails to appear at the hearing after due notice, and good cause for continuance is not shown, the commission shall render its decision upon the evidence presented to it. Copies of such decision shall be served upon all interested parties or their representatives, and shall be kept on file in the office of the commission in Helena, Montana, open to public inspection. The commission shall have continuing jurisdiction over all matters heard by it, to examine additional evidence, or to hear additional testimony, and to revise, modify, alter, amend or reverse all orders, demands, findings and decisions made by it at any time and shall

not lose jurisdiction until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed in such court.

67-2128. **Cease and desist orders.**

(a) If the agency determines after notice and hearing that a person has:

1. Violated any provision of this act;

2. Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;

3. Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the agency;

4. Disposed of any subdivided lands which have not been registered with the agency; or,

5. Violated any lawful order or rule of the agency; it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this act.

(b) If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the agency whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within twenty (20) days to determine whether or not it becomes permanent.

67-2129. **Revocation.**

(a) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

1. Failed to comply with the terms of a cease and desist order;

2. Been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

3. Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

4. Failed faithfully to perform any stipulation or agreement made with the agency as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or,

5. Made intentional misrepresentations or concealed material facts in an application for registration. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the agency finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

67-2130. **Judicial review.**

(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by an order pertaining to registration, a cease and desist order, an order of revocation, or any other final decision of the agency is entitled to judicial review under this act. This section does not limit utilization or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency

action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition in any district court of this state within thirty (30) days after mailing notice of the final decision of the agency, or, if a rehearing is requested, within thirty (30) days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

(c) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(d) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its finding and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

1. In violation of constitutional or statutory provisions;

2. In excess of the statutory authority of the agency;

3. Made upon unlawful procedure;

4. Affected by other error or law;

5. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or,

6. Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

67-2131. **Penalties.** Any person who violates any provision of this act or who wilfully violates any rule or regulation adopted under it or any person who wilfully, in an application for registration, makes any untrue statement of a material fact or omits to state a material fact is guilty of a felony and may be fined not less than one thousand dollars ($1,000.00) nor more than five thousand dollars ($5,000.00), or he may be imprisoned for not more than two (2) years, or both.

67-2132. **Civil remedy.**

(a) Any person who disposes of subdivided lands in violation of section 4, or who in disposing of subdivided lands makes an untrue statement of a material fact, or who in disposing of subdivided lands omits a material fact required to be stated in a registration statement

or public offering statement or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omisison or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission, or that the purchaser did not rely on the untruth or omission.

(b) In addition to any other remedies, the purchaser, under subsection (a), of this section may recover the consideration paid for the lot, parcel, unit or interest in subdivided lands together with interest at the rate of six percent (6%) per year from the date of payment, property taxes paid, costs, and reasonable attorneys' fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance, less the value of the land when disposed of and less interest at the rate of six percent (6%) per year on that amount from the date of disposition.

(c) Every person who directly or indirectly controls a subdivider liable under subsection (a), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(d) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(e) A tender of reconveyance may be made at any time before the entry of judgment.

(f) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this act or any rule or order under it is void.

67-2133. **Jurisdiction.** Dispositions of subdivided lands are subject to this act, and any district court of this state has jurisdiction in claims arising under this act if:

1. The subdivider's principal office is located in this state; or,

2. Any offer of disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

67-2134. **Interstate rendition.** In the proceedings for extradition of a person charged with a crime under this act, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

67-2135. **Service of process.**

(a) In addition to the methods of service of process provided for in the Montana rules of civil procedure service may be made upon any person for any cause arising under the provisions of this act by deliver-

ing a copy of the process to the office of the agency, but it is not effective unless:

1. The plaintiff (which may be the agency in a proceeding instituted by it) forthwith sends a copy of the process and of the pleading by registered mail to the defendant or respondent at his last known address; and,

2. The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(b) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state. that conduct authorizes the agency to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (a).

67-2136. **Short title.** This act may be cited as the Foreign Land Sales Practices Act.

Notes: **Severability.** If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

All acts and parts of acts in conflict herewith are hereby repealed.

RECORDING TRANSFERS

Recording Transfers—Release of Oil, Gas and Mineral Leases

Section 73-101. What may be recorded—recording certified copies in another county.
73-105. Acknowledgement of instruments required, except when.
73-110. In what office.
73-111. Instrument—when deemed recorded.

73-101. **What may be recorded—recording certified copies in another county.** Any instrument or judgment, affecting the title to or possession of real property, may be recorded under this chapter. When any instrument or judgment, affecting the title to or possession of real property, situated in more than one county in this state, has been recorded in either of such counties, a copy thereof, certified to by the county clerk of the county in which it has been recorded, may be recorded in any other county in this state wherein any portion of the real property affected by such instrument or judgment is situated, and such records will have the same effect as if the original instrument or judgment had been so recorded.

73-105. **Acknowledgment of instruments required, except when.** Before an instrument can be recorded, unless it belongs to the class provided for in either sections 73-102, 73-104, 39-124 or 39-125, its execution must be acknowledged by the person executing it, or, if executed by a corporation, by its president, vice-president, secretary, or assistant secretary, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, or proved by a subscribing witness, or as provided in sections 39-120 and 39-121, and the acknowledgment or proof certified in the manner prescribed by sections 39-101 to 39-130.

73-110. **In what office.** Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated.

73-111. **Instrument—when deemed recorded.** An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the county clerk's office with the proper officer for record.

Effect of Recording or Failure to Record Conveyance of Real Property

Section 73-201. Record—to whom notice—recording copies.
73-202. Conveyances to be recorded, or are void, etc.
73-203. Conveyances defined.

73-201. **Record—to whom notice—recording copies.** Every conveyance of real property acknowledged or proved, and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees; and a certified copy of any such recorded conveyance may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance. Further, every conveyance and/or encumbrance of real property acknowledged or proved, and certified, and recorded as prescribed by law, and which is executed by one who thereafter acquires an interest in the said real property by a conveyance which said conveyance is constructive notice as aforesaid, is, from the time such latter conveyance is filed with the county clerk for record, constructive notice of the contents of such earlier conveyance and/or encumbrance to subsequent takers, purchasers, mortgagees, or other encumbrance(r)s or transferees.

73-202. **Conveyances to be recorded, or are void, etc.** Every conveyance of real property, other than a lease for a term not exceeding one year, is void against any subsequent purchaser or encumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

73-203. **Conveyances defined.** The term "conveyance," as used in the two preceding sections, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to real property may be affected, except wills.

SALES AND EXCHANGE

Sale and Agreements for Sale

Section 74-101. Sale defined.
74-102. Subject of sale.
74-103. Agreement for sale.
74-104. Agreement to sell.
74-105. Agreement to buy.
74-106. Agreement to sell and buy.
74-107. What may be the subject of the contract.
74-108. Agreement to sell real property.
74-109. Usual common-law covenants required by such con-
contracts, when.
74-110. Form of such covenants.

74-101. **Sale defined.** Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

74-102. **Subject of sale.** The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

74-103. **Agreement for sale.** An agreement for sale is either:

1. An agreement to sell;
2. An agreement to buy; or,
3. A mutual agreement to sell and buy.

74-104. **Agreement to sell.** An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

74-105. **Agreement to buy.** An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

74-106. **Agreement to sell and buy.** An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

74-107. **What may be the subject of the contract.** Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not.

74-108. **Agreement to sell real property.** An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

74-109. **Usual common-law covenants required by such contracts, when.** An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant covenants of "seizin," "quiet enjoyment," "further assurance," "general warranty," and "against encumbrances."

74-110. **Form of such covenants.** The covenants mentioned in the last section must be in substance as follows:

"The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

CONTRACT FOR SALE OF PERSONAL PROPERTY, WHEN VALID—FILING—SEIZURE ON DEFAULT

Section 74-203. Contract for sale of real property.

74-203. **Contract for sale of real property.** No agreement for the sale of real property, or of any interest therein, is valid, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized, in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

TAXATION

Section 84-406. Time of assessment—motor vehicles—mobile homes—livestock.

84-406. **Time of assessment—motor vehicles—mobile homes—livestock.**

1. The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first Monday of March next preceding. He must also ascertain and assess all mobile homes arriving in his county after 12 midnight of the first Monday of March next preceding. The procedure provided by this section shall not apply to:

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock being fed in feeding pens or enclosures which may by subdivision (3) of this section be assessed on an average inventory basis. Credits must be assessed as provided in section 84-101, subdivision 6.

(c) Property defined in section 53-642 as "special mobile equipment" shall be subject to assessment of personal property taxes either on the date that application is made for a special mobile equipment plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

2. The assessor must ascertain and assess all motor vehicles, except mobile homes, in his county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall continue to be assessed at full and true value as of the first Monday of March.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to asssessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

3. The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the value of livestock more than six (6) months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve (12).

WILLS

Execution and Revocation

Section 91-102. Married women, wills by.

91-102. **Married women, wills by.** A married woman may make a will in the same manner and with the same effect as if she were sole, except that such will shall not, without the written consent of her husband, operate to deprive him of more than two-thirds of her real estate or of more than two-thirds of her personal estate.

WILLS, SUCCESSION, PROBATE AND GUARDIANSHIP

Succession

Section 91-401. Succession defined.
91-402. Intestate estate—to whom passes.
91-403. Succession to and distribution of estates.

91-401. **Succession defined.** Succession is the coming in of another to take the property of one who dies without disposing of it by will.

91-402. **Intestate estate—to whom passes.** The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the district court, and to the possession of any administrator appointed by the court for the purposes of administration.

91-403. **Succession to and distribution of estates.** When any person having title to any estate not limited by marriage contract dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided by the laws of Montana, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife, and only one (1) child, or the lawful issue of one (1) child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one (1) child living, or one (1) child living, and the lawful issue of one (1) or more deceased children, one-third (⅓) to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one (1) child living, or one (1) child living, and the lawful issue of one (1) or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.
2. If the decedent leaves no issue, the whole of the estate shall go to the surviving husband or wife. If the decedent leaves no issue, nor husband nor wife, the estate must go to the father and mother in equal shares, or if either be dead then to the other.
3. If there be neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation.
4. If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, the estate goes to the next of kin, in equal degree,

excepting that where there are two (2) or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

5. If the decedent leaves several children, or one (1) child, and the issue of one (1) or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

6. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parents descends to the issue of all other children of the same parent; and if all the issues are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

7. If the decedent leaves no husband, wife, or kindred, the estate escheats to the state.

CIVIL PROCEDURE

Evidence—Indispensable—Unwritten Agreements—Conclusive—Unanswerable

Section 93-1401-5. Transfer of real property to be in writing.
93-1401-7. Agreement not in writing—when valid.

93-1401-5. **Transfer of real property to be in writing.** No estate or interest in real property, other than for leases for a term not exceeding one year, nor any trust over or power concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance, or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

93-1401-7. **Agreement not in writing—when invalid.** In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 30-105.

3. An agreement made upon consideration of marriage, other than a mutual promise to marry.

4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

This section shall not apply to agreements subject to the Uniform Commercial Code.

LIMITATION OF ACTIONS FOR RECOVERY OF REAL PROPERTY

Section 93-2509. What constitutes adverse possession under written instrument or judgment.
93-2510. Premises actually occupied under the claim of title deemed to be held adversely.
93-2511. What constitutes adverse possession under claim of title not written.
93-2512. Relation of landlord and tenant as affecting adverse possession.
93-2513. Occupancy and payment of taxes necessary to prove adverse possession.
93-2514. Right of possession not affected by descent cast.

93-2509. **What constitutes adverse possession under written instrument or judgment.** For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved.

2. Where it has been protected by a substantial inclosure.

3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing timber, either for the purpose of husbandry, or for pasturage, or for the ordinary use of the occupant.

4. Where a known farm or a single lot has been partly improved, the portion of such farm or lot that has been left not cleared or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

93-2510. **Premises actually occupied under the claim of title deemed to be held adversely.** Where it appears that there has been an actual continued occupation of land, under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

93-2511. **What constitutes adverse possession under claim of title not written.** For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure;

2. Where it has been usually cultivated or improved.

93-2512. **Relation of landlord and tenant as affecting adverse possession.** When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of five (5) years from the termination of the tenancy, or where there has been no written lease, until the expiration of five (5) years from the time of the last payment of rent, notwithstanding such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods prescribed in this section.

93-2513. **Occupancy and payment of taxes necessary to prove adverse possession.** In no case shall adverse possessions be considered established under the provisions of any section or sections of this code, unless it shall be shown that the land has been occupied and claimed for a period of five (5) years continuously, and the party or persons, their predecessors and grantors, have, during such period, paid all the taxes, state,

county or municipal, which have been legally levied and assessed upon said land.

93-2514. **Right of possession not affected by descent cast.** The right of a person to the possession of real property is not impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

ATTACHMENT

Section 93-4307. Levy of attachment.

93-4307. **Levy of attachment.** The sheriff to whom the writ is directed and delivered must execute the same without delay, and if the undertaking mentioned in section 93-4305 be not given, as follows:

1. Real property, standing upon the records of the county in the name of the defendant, must be attached by filing with the county clerk a copy of the writ, together with the description of the property attached, and a notice that it is attached.

2. Real propery, or an interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached by filing with the county clerk a copy of the writ, together with a description of the property, and a notice that such real property, and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached. The county clerk must index such attachment when filed, in the names of both of the defendant and of the person by whom the property is held, or in whose name it stands on the record.

JUDGMENT—MANNER OF GIVING AND ENTRY—JUDGMENT ROLL AND DOCKET—LIEN OF

Section 93-5708—Judgment lien—when it begins and when it expires.
93-5709. Docket—how kept and what to contain.
93-5710. Recorded judgment or decree as notice, despite defects—certified copies as evidence.
93-5710.1. Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence.
93-5710.2. Judgment or decree recorded before 1967 as notice of contents—certified copies as evidence.
93-5711. Docket to be opened for inspection without charge.
93-5712. Transcript to be filed in any county and judgment to become a lien there.

93-5708. **Judgment lien—when it begins and when it expires.** Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all real property of the judgment debtor not exempt for execution in the county, owned by him at the time, or which he may afterward acquire, until the lien ceases. The lien continues for six years, unless the judgment be previously satisfied.

93-5709. **Docket—how kept and what to contain.** The docket mentioned in the last section is a book which the clerk keeps in his office, with each page divided into eight columns, and headed as follows: Judgment debtors; judgment creditors; judgment, time of entry; where entered in judgment book; appeals, when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount must be stated in the docket under the head of judgment; if the judgment be for any other relief, a

memorandum of the general character of the relief granted must be stated. The names of the defendants must be entered in alphabetical order.

93-5710. **Recorded judgment or decree as notice, despite defects—certified copies as evidence.** Any judgment or decree of any court of this state affecting real property, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

93-5710.1. **Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence.** Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the clerk of the district court and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

93-5710.2. **Judgment or decree recorded before 1967 as notice of contents—certified copies as evidence.** Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1967, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

93-5711. **Docket to be opened for inspection without charge.** The

docket kept by the clerk is open at all times, during office hours, for the inspection of the public without charge. The clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

93-5712. **Transcript to be filed in any county and judgment to become a lien there.** A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county, and from the time of the filing the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in such county owned by him at the time, or which he may afterward and before the lien expires, acquire. The lien continues for six years, unless the judgment be previously satisfied.

THE EXECUTION

Section 93-5836. Redemptioners' rights—manner of redeeming—when purchaser entitled to deed—certificate of redemption —redemption by stockholders—redeeming from wife.
93-5841. Possession of lands prior to foreclosure and during period of redemption.

93-5836. **Redemptioners' rights—manner of redeeming—when purchaser entitled to deed—certificate of redemption—redemption by stockholders—redeeming from wife.** (2) Written notice of redemption must be given to the sheriff, and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner, or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk; and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien. If no redemption be made within one year after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty (60) days have elapsed, and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor or his wife redeem, he or she must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. If the wife redeem, she shall become the owner of her husband's interest, subject to any liens thereon at the time of the execution sale. Upon a redemption by a debtor, or his wife, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale. (See official code for complete statute).

93-5841. **Possession of lands prior to foreclosure and during period of redemption.** The purchaser of lands at mortgage foreclosure or execution sales is not entitled to the possession thereof as against the execution debtor during the period of redemption allowed by law while said execution debtor personally occupies the land as a home for himself and his family. It shall be unlawful to insert in any mortgage of real estate any provision or language intended to constitute a waiver by the owner of real estate personally occupying land as a home for himself and family of the provision of this section or any provision or language intended to give the mortgagee possession of the land or premises prior to fore-

closure upon default of tax, principal or interest payments. The intention hereof being to insure to such owner the possession of his land prior to foreclosure and during the year of redemption.

FORECLOSURE OF MORTGAGES—ACTIONS FOR—SALES UNDER POWERS

Section 93-6001. Proceedings in foreclosure suits.
93-6002. Surplus money to be deposited in court.
93-6003. Proceedings debt secured falls due at different times.
93-6004. Power of sale.
93-6005. Sale of real estate under power in mortgage—posting notices.
93-6006. Rights of redemption applicable.
93-6007. Allowance of attorneys' fees, petition and notice.
93-6008. Deficiency judgment not allowed on foreclosure of purchase price mortgage.

93-6001. **Proceedings in foreclosure suits.** There is but one action for the recovery of debt, or the enforcement of any right secured by mortgage upon real estate, which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment direct a sale of the encumbered property (or so much thereof as may be necessary), and the application of the proceeds of the sale, and the payment of the costs of the court and the expenses of the sale, and the amount due the plaintiff; and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of such judgment debtor as in other cases on which execution may be issued. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

93-6002. **Surplus money to be deposited in court.** If there be surplus money remaining after the payment of the amount due on the mortgage, lien, or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

93-6003. **Proceedings debt secured falls due at different times.** If the debt for which the mortgage, lien, or encumbrance is held is not all due, as soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterward, as often as more becomes due for principal or interest, the court may on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instances, and the entire debt and costs paid there being a rebate of interest where such rebate is proper.

93-6004. **Power of sale.** When a real estate mortgage confers a power of sale, either upon the mortgagee or any other person, to be executed after a breach of the obligation for which the mortgage is a security, either an action may be maintained under this chapter to foreclose, or proceedings may be had under the provisions of the mortgage.

93-6005. **Sale of real estate under power in mortgage—posting notices.** Hereafter real estate sold under a power of sale given and contained in

a mortgage of real estate, except in a trust indenture as defined in the "Small Tract Financing Act of Montana," shall be advertised for sale at least thirty days before the date fixed for such sale, in a newspaper in the county in which such real estate is situated, and in case there is no newspaper printed and published in said county, then by posting notices in at least five conspicuous places in said county, one of which notices must be posted on the land so advertised for sale. Two other of said notices must be posted in conspicuous places in the township in which said land is situated, one in such conspicuous place in said county as will be most likely to give notice to all persons interested in said sale, and one of said notices must be posted in a conspicuous place at the front door of the county courthouse of the county in which said land is located and in addition to the said publication or posting, as hereinbefore provided, notices of such sale must be served personally at least thirty days before the date fixed for such sale upon the occupant of the property so advertised for sale, and upon the mortgagor if within the state of Montana, and upon every real estate so advertised for sale who may be found within the said state of Montana.

93-6006. **Rights of redemption applicable.** All of the rights, powers, and privileges concerning the redemption from sales of real estate applicable to the sales of real estate under foreclosure proceedings or sales under execution, shall be granted and allowed to sales of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state except to sales of real estate under and by virtue of the power of sale conferred upon a trustee under a trust indenture as defined in the "Small Tract Financing Act of Montana."

93-6007. **Allowance of attorney's fees, petition and notice.** If the mortgagee shall demand attorney's fees in case of the sale of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the "Small Tract Financing Act of Montana," he shall petition the district court of the county in which said real estate, or any part thereof, may be situated to fix the amount of such attorney's fee, and a copy of such petition shall be served upon all parties having or claiming an interest of record in the property to be sold, or such of them as may be found within the state, which said copy of said petition must be served at least ten days before the day fixed hearing, and notice of the time and place of such hearing shall be served at the same time as the copy of said petition is served; such petition shall be acted upon by the said district court before the notice of sale by publication or posting, as hereinbefore provided for, shall be given.

93-6008. **Deficiency judgment not allowed on foreclosure of purchase price mortgage.** Upon the foreclosure of any mortgage, hereafter executed, to any vendor of real property or to his heirs, executors, administrators or assigns, for the balance of the purchase price of such real property, the mortgagee shall not be entitled to a deficiency judgment on account of such mortgage or note or obligation secured by the same.

NUISANCE, WASTE AND TRESPASS OF REAL PROPERTY—ACTIONS FOR

Section 93-6101. Nuisance defined and action for.
93-6102. Waste, actions for.
93-6103. Trespass for cutting or carrying off trees, etc., action for.
93-6104. Measure of damages in certain cases under the last section.
93-6105. Damages in action for forcible entry, etc., may be trebled.

93-6101. **Nuisance defined and actions for.** Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so far as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

93-6102. **Waste, actions for.** If a guardian, tenant for life or years, joint tenant in common of real property commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

93-6103. **Trespass for cutting or carrying off trees, etc., action for.** Any person who cuts down or carries off any wood or underwood, tree, or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds; or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town. for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

93-6104. **Measure of damages in certain cases under the last section.** Nothing in the last section authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

93-6105. **Damages in action for forcible en ry, etc., may be trebled.** If a person recovers damages for a forcible or unlawful entry in or upon, or detention of, any building or cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CRIMES AND CRIMINAL PROCEDURE

False Personation and Cheats

Section 94-1807. Selling land twice.
94-1808. Married persons selling land under false representations.
94-1822. Inducing engagement as an advertising agency for sale of real property by misrepresentation of fact concerning services—penalty.

94-1807. **Selling land twice.** Every person who, after once selling, bartering or disposing of any tract of land or town lot, or after executing any bond or agreement for the sale of any land or town lot, again wilfully and with intent to defraud previous or subsequent purchasers, sells, barters or disposes of the same tract of land or town lot, or any part thereof, or wilfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment in the state prison not less than one nor more than ten years.

94-1808. **Married person selling land under false representations.** Every person who falsely represents himself or herself as competent to sell or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representation wilfully conveys or mortgages the same, is guilty of a felony.

94-1822. **Inducing engagement as an advertising agency for sale of real property by misrepresentation of fact concerning services—penalty.** Any person engaged or purporting to be engaged as an advertising agency for real property who accepts or solicits money or other considerations for himself or for any other person, in connection with the execution by an owner of real property of any contract whereby such owner authorizes such person to serve as an advertising agency for the sale of such property, and who for the purpose of inducing the owner of such property to enter into such a contract makes or procures the making of any oral or written representation of fact with respect to the nature or extent of the services to be rendered for or on behalf of such owner by any such person under contract, with reasonable ground for belief that such representation is not true, or who refrains from disclosing to such owner, any matter of fact pertinent to the nature or extent of the services to be rendered for or on behalf of such owner by any such person under such contract is guilty of a felony and shall be imprisoned for not less than one (1) year nor more than five (5) years.

Section XXVII

Glossary

Definitions of words and terms commonly used in the Real Estate practice.

A.T.A. TITLE POLICY: A type of title insurance policy issued by title insurance companies which expands the risks normally insured against under the standard type policy to include unrecorded mechanics' liens; unrecorded physical easements; facts a physical survey would show; water and mineral rights; and rights of parties in possession such as tenants and buyers under unrecorded instruments.

ABSTRACT OF TITLE: A historical summary of the conveyances, transfers, and other facts relied on as evidence of title; a summary of the documents having a bearing on the history of the title to a property, arranged in the order in which they were recorded.

ACCELERATION CLAUSE: A clause in a contract by which the time for payment of a debt is advanced, at the option of the creditor, usually making the obligation immediately due and payable, because of the breach of some condition, such as failure to pay an installment when due.

ACCEPTANCE: The indication or manifestation by the offeree that he is willing to be bound by the terms of the offer.

ACKNOWLEDGMENT: A declaration made by a person to a notary public, or other public official authorized to take acknowledgments, that the instrument was executed by him and that it is his free and voluntary act.

ACQUISITION: The act or process by which a person procures property.

ACRE: A measure of land equaling 160 square rods, or 4,840 square yards, or 43,560 square feet, or a tract about 208.71 feet square.

ACRE FOOT: A term used in measuring the volume of water, equal to the quantity of water required to cover 1 acre 1 foot in depth, or 43,560 cubic feet.

ADMINISTRATOR: A person appointed by the court to administer the estate of a deceased person who died without leaving a will; that is, who died intestate.

AD VALOREM: According to value.

ADVERSE POSSESSION: The open and notorious possession

of real property as a claim to title. Thus, a method of acquiring title. The right of an occupant of land to acquire a superior title to the real estate against the real owner, where such possession has been actual, notorious, hostile, visible and continuous for the required statutory period. The occupant must also pay all taxes and show exclusive possession of the property during the statutory period (in Montana, 5 years). The purpose behind this concept is to promote the productive use of land and to give title to the one putting the land to use.

AFFIDAVIT: A statement or declaration reduced to writing, and sworn to or affirmed before some officer, usually a notary public, who has authority to administer an oath or affirmation.

AFFIRM: To confirm, to aver, to ratify, to verify.

AGENCY: A legal relationship resulting from an agreement or contract, either expressed or implied, written or oral, whereby one person, called the agent, acts on behalf of another, called the principal, to do certain acts in dealing with a third party. See FIDUCIARY.

AGENT: Any person, partnership, association, or corporation authorized or employed by another, called the principal, to act for, on behalf of, and subject to the control of the latter. Any person capable of contracting can be an agent.

AGREEMENT OF SALE: A written agreement or contract between seller and purchaser in which they reach a meeting of minds on the terms and conditions of a sale.

AIR RIGHTS: Rights in real property to use the space above the surface of the real estate without precluding the use of its surface area for some other purpose.

ALIENATION: The transferring of property to another; the transfer of property and possession of lands, or other things, from one person to another.

AMENITIES: In real estate, amenities refer to such circumstances, in regard to location, outlook, or access to a park, lake, highway, view or the like which enhance the pleasantness or desirability of real estate and which contribute to the pleasure and enjoyment of the occupants. Pleasant satisfactions that are received through using rights in real property but that are not received in the form of money.

AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS: A trade association of real estate appraisers.

AMORTIZATION: The process of payment of a debt or obligation by a series of payments over time. Generally the payments are in equal amounts that include principal and

interest; and generally the payments are made at uniform intervals of time.

AMORTIZED MORTGAGE: A mortgage in which repayment is made in accordance with a definite plan that requires the repayment of certain amounts at definite times so that all the debt is released by the end of the term.

ANIMAL UNIT (A.U.): The grazing capacity of land to properly sustain one animal and offspring, if any, for one year.

ANNUITY: A sum of money or its equivalent that constitutes one of a series of periodic payments.

APPRAISAL: An estimate of the quality or value of a specific parcel of real estate; the process by which conclusions of the value of property are obtained.

APPRAISAL REPORT: A report, usually written, of the appraised value, together with the pertinent information regarding the property appraised and the evidence and analysis leading to the reported value estimate.

APPRAISER: One who is in the business of making appraisals on the basis of a fee or salary or in conjunction with some other compensated service.

APPROPRIATION OF: A legal term designating the act or acts involved in the taking and reducing to personal possession of water occurring in a stream or other body of water, and of applying such water to beneficial uses or purposes.

APPURTENANCE: That which belongs to something else; something adapted to the use of the real property to which it is connected or belongs, and which was intended to be a permanent addition to the land, and which passes as an incident to said land, as a house, barn, garage, right of way.

ASSESSED VALUATION: The estimate of value by a unit of government for taxation purposes.

ASSESSMENT: In real estate, the listing and valuation of property for the purpose of apportioning a tax upon it. See SPECIAL ASSESSMENT.

ASSIGNEE: The party to whom an interest in property has been assigned or transferred.

ASSIGNMENT: A transfer to another of rights, interest, or claim in or to real or personal property.

ASSIGNOR: The party who assigns or transfers an interest in property to another.

ASSUMPTION OF A MORTGAGE: Agreement by the grantee of real property that is encumbered by a mortgage that he, the grantee, will pay such a mortgage; the assumption of a

personal liability under an existing mortgage; becoming a co-guarantor for the payment of a mortgage or deed of trust note.

ATTACHMENT: A type of lien, permitted only under special circumstances, which is placed against the real estate of a defendant in a pending law suit for money damages.

ATTORNEY IN FACT: One who is authorized to perform certain acts for another under a power of attorney; power of attorney may be limited to a specific act or acts; or be general.

ATTORNEY'S OPINION: In real estate, the written opinion of an attorney at law regarding the marketability of title to real property based upon an examination of the abstract of title or the records in the county clerk and recorder's office.

BALLOON PAYMENT: Where the final installment payment on a note is greater than the preceding installment payments and it pays the note in full, such final installment is termed a balloon payment.

BARGAIN AND SALE DEED: Any deed that recites a consideration and purports to convey the real estate; a bargain and sale deed with a covenant against the grantor's acts is one in which the grantor warrants that he himself has done nothing to harm or cloud the title.

BASE LINE: A parallel that serves as a reference for other parallels.

BENCH MARKS: A location indicated on a durable marker by surveyors.

BENEFICIARY: The person who receives or is to receive the benefits resulting from certain acts; one receiving benefits, profits, or advantage; one for whose benefit a trust is created.

BEQUEATH: To give or hand down by will; to leave by will.

BEQUEST: That which is given by the terms of a will.

BILL OF SALE: A written instrument by which one person transfers or conveys right, title or interest in personal property to another.

BLANKET MORTGAGE: A single mortgage which covers more than one piece of property.

BLIGHTED AREA: A declining area in which real property values are seriously affected by destructive economic forces, such as encroaching inharmonious property usages, infiltration of lower social and economic classes of inhabitants, and/or rapidly depreciating builders.

BONA FIDE: In good faith, without fraud.

BREACH: The breaking of a law, or failure of duty, either by omission or commission.

BROKER: Any person, firm, partnership, association or corporation, who for compensation or valuable consideration sells or exchanges or offers for sale or exchange, buys or offers to buy, or who negotiates the purchase or sale or exchange, of real estate, or who leases or offers to lease, or rents or offers to rent any real estate or improvements thereon for another or others.

BUILDER: One who undertakes the improvement of land by erecting structures; one who undertakes the production of real estate resources by improving land through the erection of structures.

BUILDING CODES: Government regulations that specify minimum construction standards for the purpose of maintaining public health and safety.

BUILDING PERMIT: Authorization or permission by local government for the erection, alteration, or remodeling of improvements within its jurisdiction.

BUYER'S MARKET: A market in which buyers can fulfill their desires at lower prices and on more advantageous terms than those prevailing earlier; a market characterized by many properties available and few potential users demanding them at prevailing prices.

CPM (Certified Property Manager): See INSTITUTE OF REAL ESTATE MANAGEMENT.

CAPITALIZATION: In appraising, determining value of property by considering net income and percentage of reasonable return on the investment.

CAPITALIZATION RATE: In real estate, capitalization rate can be defined as the relationship or ratio between the net income from an investment and the value of an investment. This ratio is usually expressed as a percentage.

CAVEAT EMPTOR: "Let the buyer beware." The buyer must examine the goods or property and buy at his own risk.

CERTIFICATE OF TAXES DUE: A written statement or guaranty of the condition of the taxes on a certain property, made by the County Treasurer of the county wherein the property is located. Any loss resulting to any person from an error in a tax certificate shall be paid by the county which such treasurer represents.

CHAIN: Unit of land measurement—66 feet.

CHAIN OF TITLE: A history of conveyance and encumbrances

affecting the title from the time the original patent was granted, or as far back as records are available.

CHATTEL: Any item of property other than real estate, usually referred to as personal property; an item of movable property.

CHATTEL MORTGAGE: A personal property mortgage.

CLOSING STATEMENT: A listing of the debits and credits of the buyer and seller to a real estate transaction for the financial settlement of the transaction.

CLOUD ON THE TITLE: An outstanding claim or encumbrance which, if valid, would affect or impair the title of the owner of the property.

COGNOVIT NOTE: Note containing a confession of judgment clause effective against borrower.

COLLATERAL SECURITY: Often called simply "collateral"; in banking phraseology, it means some security additional to the personal obligation of the borrower, as a chattel mortgage or trust deed.

COLLUSION: An agreement between two or more persons to defraud another of his rights by the forms of law, or to obtain an object forbidden by law.

COLOR OF TITLE: That which appears to be good title but which is not title in fact.

COMMERCIAL PAPER: Bills of exchange used in commercial trade.

COMMERCIAL PROPERTIES: Properties intended for use by all types of retail and wholesale stores, office buildings, hotels, and service establishments.

COMMINGLING: Mixing money belonging to others with personal or business funds.

COMMISSION: Sum due a real estate broker for services in that capacity; the administrative and enforcement tribunal of real estate license laws.

COMMITMENT: A pledge or a promise or firm agreement.

COMMON LAW: The principles and rules of law, originating from usage and custom, sanctioned by the courts and which are not dependent upon legislative expression or enactment for their authority; also that body of law, based on custom and usage, developed and formulated by the old English courts.

COMMUNITY PROPERTY: Property, real or personal, which by statute belongs equally to husband and wife; more specifically, property acquired by the husband and wife, or either, during marriage, by their industry and not by gift,

said property belonging equally to husband and wife. Community property laws exist only in eight states: Ariz., Calif., Idaho, La., Nev., N.M., Tex., and Wash. [Oklahoma law repealed in 1949.]

COMPOUND INTEREST: Interest paid on original principal and also on the accrued and unpaid interest which has accumulated.

CONDEMNATION: In real property law, the process by which property of a private owner is taken for public use, with just compensation to the owner, under the right of eminent domain.

CONDITIONAL SALE CONTRACT: A contract for the sale of property stating that delivery is to be made to the buyer, title to remain vested in the seller until the conditions of the contract have been fulfilled.

CONDOMINIUM: A form of property ownership providing for individual ownership of a specific apartment or other space not necessarily on ground level together with an undivided interest in the land or other parts of the structure in common with other owners.

CONSIDERATION: One of the essential elements of a contract; a promise or an act of legal value given in return for a promise or transfer.

CONSTRUCTION LOAN: A loan which is made to finance the actual construction of improvements on land.

CONSTRUCTION MORTGAGE: A short-term mortgage used to finance the building of a structure.

CONSTRUCTIVE NOTICE: The conclusive presumption that all persons have knowledge of the contents of a recorded instrument.

CONTINGENT REMAINDER: An interest that will become a remainder only if some condition is fulfilled.

CONTRACT: An agreement, enforceable at law, between two or more competent persons, having for its object a legal purpose, wherein the parties agree to act in a certain manner.

CONTRACT FOR DEED: A written agreement by which real property is sold to a buyer who agrees to pay in installments the established price, with interest, over a specified period of years, with title remaining with the seller until the purchase price or some portion of the purchase price is paid.

CONTRACT OF SALE: An agreement to transfer title after certain payments or conditions have been met.

CONTRACTOR, GENERAL: One who supervises the improve-

ment of land by erection of structures or other improvements; one who has the responsibility for such improvement but does not necessarily initiate the process as is done by a builder.

CONVENTIONAL LOAN: A mortgage loan made by a financial institution without insurance or guarantee by the FHA or VA. It is called a conventional loan because it conforms to accepted standards, modified within legal bonds by mutual consent of the borrower and lender.

CONVENTIONAL MORTGAGE: A mortgage securing a loan made by private investors without governmental participation, that is, which is not FHA insured or GI guaranteed.

CONVEYANCE: An instrument in writing by which some estate, interest, or title in real estate is transferred from one person to another, such as a deed.

COOPERATIVE: A system of indirect ownership of a single unit in a multi-unit structure. The individual owns shares in a nonprofit corporation which holds title to the building, the corporation in turn gives the owner a long-term proprietary lease on the unit.

COOPERATIVE OWNERSHIP: A form of apartment ownership. Occupant acquires ownership by purchasing shares in a corporation but typically must consult the corporation for such actions as sale or improvement.

CORPORATION: A group or body of persons established and treated by law as an individual or unit with rights and liabilities or both, distinct and apart from those of the persons composing it. A corporation is a creature of law having certain powers and duties of a natural person. Being created by law it may continue for any length of time the law prescribes.

CORPOREAL RIGHTS: Possessory rights in real property.

COVENANT: A promise or agreement, usually in writing, whereby a party pledges or guarantees to another that something is done or shall be done, or stipulates for the truth of certain facts.

CUBAGE: The number or sum resulting by multiplying the width of a thing by its heighth and by its depth or length.

CUBIC FOOT PER SECOND: A unit of discharge for measurement of flowing liquid, equal to a flow of 1 cu. ft. per sec. past a given section. Also called Second-foot.

CUL-DE-SAC: A dead-end street that widens at the end to form a circular area sufficient to enable an auto to make a U turn.

CURTESY: A common law estate in land given to the husband upon his wife's death, consisting of a life estate in all the property owned by the wife during the marriage, provided a child was born alive from their marriage. Abolished in Montana.

DAMAGES: The indemnity recoverable by a person who has sustained an injury, either in his person, property, or relative rights, through the act or default of another.

DEBENTURE: Bonds issued without security.

DEBT: A sum of money due by certain and express agreement.

DEDICATION: An appropriation of land to some public use, made by the owner and accepted for such use by or on behalf of the public, as streets in a platted subdivision.

DEED: A legal instrument in writing, duly executed and delivered, whereby the owner of real property (grantor) conveys to another (grantee) some right, title or interest in or to real estate.

DEED RESTRICTIONS: Limitations placed upon the use of real property in the writing of a deed.

DEFAULT: The non-performance of a duty; the omission or failure to perform a legal duty; failure to meet an obligation when due.

DEFEASIBLE FEE: Sometimes called a base fee or qualified fee; a fee simple absolute interest in land that is capable of being defeated or terminated upon the happening of a specified event.

DEFECTIVE TITLE: A title that would be impaired if an outstanding claim proved to be valid and where such a claim could be shown to be valid.

DEFICIENCY JUDGMENT: The difference between the indebtedness sued upon and the sale price of the mortgaged property at foreclosure, where the sale price is less than the indebtedness.

DEMAND MORTGAGE: A mortgage which is payable on demand of the holder of the evidence of the debt.

DEMOGRAPHIC: Pertaining to the structure of population, e.g., size, density, statistical characteristics.

DEPLETION: The exhaustion of a resource such as the removal of a mineral deposit.

DEPOSIT: A sum of money or other consideration tendered in conjunction with an offer to purchase rights in real property. See EARNEST MONEY.

DEPRECIATION: The loss in value due to deterioration through ordinary wear and tear, action of the elements, functional or economic obsolescence.

DEVISE: A gift of real property by the last will and testament of the donor.

DISCOUNT: Interest or a fee deducted from loan at time it is made or sold.

DISPOSSESS: To deprive one of the use of real estate.

DONEE: Receiver of a gift.

DONOR: The giver of a gift.

DOUBLE DUPLEX: Two dwelling units under one roof. A double usually means dwelling units side by side; a duplex, one dwelling unit above the other.

DOWER: A common law estate in land given to the wife in her husband's real property upon his death, consisting of a life estate in one-third of all the real estate owned by the husband during the marriage.

DRAINAGE: The running off of water from the surface of land.

DURESS: Unlawful constraint exercised upon a person whereby he is forced to do some act against his will.

EARNEST MONEY: A sum of money or other consideration tendered in conjunction with an offer to purchase rights in real property. Downpayment as evidence of good faith.

EASEMENT: A right or interest in the real property of another; the right to use another's land for a specific purpose, as a right of way.

ECONOMIC BASE: The major economic support of a community; economic activities that enable it to compete effectively with others.

ECONOMIC LIFE: The period of time over which a property may be profitably utilized.

EJECTMENT: A form of action to regain possession of real property, with damages for the unlawful retention.

EMINENT DOMAIN: The right of a government to take private property for public use upon the payment of just compensation. The legal proceeding by which the government exercises this right is called "condemnation proceedings."

ENCROACHMENT: The illegal intrusion of a structure, part of a building, or obstruction over or upon a highway, sidewalk or the property of another.

ENCUMBRANCE: A claim, lien, charge, or liability attached to and binding upon real property, such as a judgment,

mortgage, mechanic's lien, lien for unpaid taxes, right of way.

ENDORSEMENT: Writing one's name, either with or without additional words, on a negotiable instrument or on an attachment thereto.

EQUITY: In real estate, the interest or value of the real estate over and above the amount of the indebtedness thereon.

EQUITY OF REDEMPTION: Right of original owner to reclaim property sold through foreclosure proceedings, by payment of debt, interest, and costs.

EROSION: The wearing of a ground surface.

ESCHEAT: The reversion of property to the state in the event the owner thereof dies without leaving a will and has no heirs to whom the property may pass by lawful descent.

ESCROW: In real estate, it is the state or condition of a deed which is conditionally held by a third party, called the escrow agent, pending the performance or fulfillment of some act or condition.

ESCROW AGREEMENT: A written agreement between two or more parties whereby the grantor, promisor or obligor delivers certain instruments of property into the hands of a third party, the escrow agent, to be held by said third party until the happening of a contingency or performance of a condition, and then to be delivered to the grantee, promisee or obligee.

ESTATE: In real estate, it refers to the degree, quantity, nature and extent of interest which a person has in real property; such as a fee simple absolute estate, an estate for years.

ESTATE AT SUFFERANCE: Rights of a tenant in real property after the expiration of a lease of the tenant holds over without special permission.

ESTATE AT WILL: Rights of a tenant in real property that may be terminated by either landlord or tenant. Often called a tenancy at will.

ESTATE FOR LIFE: A freehold estate, not of inheritance, but which is held by the tenant for his own life or the life or lives of one or more other persons, or for an indefinite period which may endure for the life or lives of persons in being and beyond the period of life.

ESTATE FOR YEARS: An interest in lands by virtue of a contract for the possession of them for a definite and limited period of time. A lease may be said to be an estate for years.

ESTATE FROM PERIOD TO PERIOD: An interest in land where there is no definite termination date but the rental period is fixed at a certain sum per week, month or year; often called a periodic tenancy.

ESTATE OF INHERITANCE: An estate which may descend to heirs. All freehold estates are estate of inheritance, except estates for life.

ESTATE TAXATION: Taxation imposed by government on property passed by will or descent.

ESTATES IN EXPECTANCY: A classification of estates by time of enjoyment when possession will be at some future time. See REMAINDER; REVERSION.

ESTATES IN POSSESSION: A classification of estates by time of enjoyment when possession is present. See CORPOREAL RIGHTS.

ESTATES IN SEVERALTY: Ownership in a single individual; a classification of estates by number of owners where the number is one.

ET AL: Abbreviation for et alius, meaning "and another."

ET UX: Abbreviation for et uxor, meaning "and wife."

ETHICS: That branch of moral science, idealism, justness, and fairness, which treats of the duties which a member of a profession or craft owes to the public, to his clients or patron, and to his professional brethren or members.

EVICTION: Dispossession by process of law; the act of depriving a person of the possession of lands, in pursuance of the judgment of a court.

EXCLUSIVE AGENCY LISTING: A listing whereby the owner appoints one real estate broker as his sole agent for a specified period of time; the owner may sell the property to a buyer which he himself finds without paying the broker a commission.

EXCLUSIVE RIGHT TO SELL LISTING: A listing whereby the owner appoints one real estate broker as his sole and exclusive agent for a specified period of time; no matter who sells the property, including the owner himself, the broker is entitled to a commission.

EXECUTE: To complete, to make, to perform, to do, to follow out; to execute a deed, to make a deed, including especially signing, sealing, and delivery; to execute a contract is to perform the contract, to follow out to the end to complete.

EXCEPTION: A writ issued by a court to the sheriff directing him to sell property to satisfy a debt.

EXECUTOR: The person named in a will to carry out its provisions.

EXECUTORY: That which is yet to be executed or performed, or which remains to be carried into operation or effect; depending upon a future performance or event.

FACTOR: An agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property or authorized to receive payment therefor from the purchase.

"FANNY MAY": Real estate financing jargon. See Federal National Mortgage Association.

FEDERAL HOME LOAN BANK: A district bank (one of the 12 federally chartered regional banks of the Federal Home Loan Bank System) that lends only to member financial institutions such as savings and loan associations.

FEDERAL HOME LOAN BANK SYSTEM: The network of Federal Home Loan Banks and member financial institutions.

FEDERAL HOUSING ADMINISTRATION INSURED MORTGAGE (FHA): A mortgage under which the Federal Housing Administration insures loans made according to its regulations by approved lenders.

FEDERAL NATIONAL MORTGAGE ASSOCIATION: (FNMA, also called Fannie Mae.) A quasi-governmental corporation which supplements private mortgage funds by buying and selling FHA insured and VA guaranteed mortgage loans.

FEDERAL SAVINGS AND LOAN ASSOCIATION: A savings and loan association with a federal charter issued by the Federal Home Loan Bank Board. A federally chartered savings and loan association is in contract to a state-chartered savings and loan association.

FEE SIMPLE ABSOLUTE: Often called a fee or fee simple; the most comprehensive ownership of real property known to the law; the largest bundle of ownership rights possible in real estate. Free of encumbrances.

FEE TAIL: An estate or a limited estate in which transfer of the property is restricted in that the property must pass to the descendants of the owner. Originally used to insure the passing of land in a direct ancestral line. Abolished in Montana.

FIDELITY BOND: A bond posted as security for the discharge of an obligation of personal services.

FIDUCIARY: A person in a position of trust and confidence,

as between principal and broker; broker as fiduciary owes certain loyalty which cannot be breached under rules of agency.

FIXTURE: An article of personal property which has been installed in or attached to land or a building thereon, in a permanent manner, so that it is now considered to be a part of the real estate.

FORECLOSURE: Generally: A proceeding in court for an order of the court, or out of court under a power of sale in the mortgage or contract authorized by statute, resulting in the sale of the encumbered property and satisfaction of the mortgage or other lien out of the proceeds thereof.

STRICT FORECLOSURE: A decree of court finding the amount due under the mortgage, ordering its payment within a specified time, and providing that in default of such payment the debtor's right and equity of redemption shall be forever barred and foreclosed.

FORECLOSURE SALE: A sale of mortgaged property to obtain satisfaction of the mortgage out of the proceeds, whether authorized by a decree of court or by a power of sale contained in the mortgage.

FORFEITURE: Loss of money or anything of value, due to failure to perform, such as under an agreement to purchase.

FRAUD: The intentional and successful employment of any cunning, deception, collusion, or artifice, used to circumvent, cheat or deceive another person, whereby that person acts upon it to the loss of his property and to his legal injury.

FREEHOLD ESTATE: A nonleasehold estate such as a fee simple estate, fee tail estate, and life estate.

FUNCTIONAL DEPRECIATION (FUNCTIONAL OBSOLESCENCE): Loss in property value because of a loss in ability of the physical property to provide services as compared with alternatives.

G. I. GUARANTEED MORTGAGE: A mortgage under which the Veterans Administration guarantees the payment of a part of the loan and pays the lender any loss sustained up to the amount of the guarantee.

GRADED OR STEP-UP LEASE: A lease with a rental payment that increases to specified amounts at specified periods of time.

GRADUATED LEASE: A lease which provides for a varying rental rate, often based upon future determination; sometimes rent is based upon the result of periodic appraisals; used largely in long-term leases.

GRANT: A technical term made use of in deeds of conveyance of lands to import a transfer.

GRANTEE: A person to whom real estate is conveyed; the buyer.

GRANTOR: A person who conveys real estate; the seller.

GRAZING LICENSES: An authorization which permits the grazing of a specified number and class of livestock on a designated area of grazing-district lands for a specified period of time, usually not in excess of one year.

GRAZING PREFERENCE ON NATIONAL FOREST: An established preference to graze certain numbers and classes of livestock upon a National Forest for a specified time and subject to rules and regulations adopted by the Forest Service.

GROSS INCOME MULTIPLIER: A technique for estimating real estate value based on some factor (multiplier) times the gross income derived from the property in the past.

GROSS NATIONAL PRODUCT: (GNP) The total value of all goods and services produced in the economy in any given period; also, the accounting method used to list the major income and expenditure (product) accounts of the nation.

GROUND LEASE: A lease for vacant land upon which the tenant may erect improvements.

GROUND WATER: A pervious formation with sides and bottom of relatively impervious material, in which ground water is held or retained. Also called Subsurface Water Basin.

GUARANTEED MORTGAGE: A mortgage in which a party other than the borrower assures payment in the event of default by a mortgagor, e.g., Veterans' Administration Guaranteed Mortgages.

HABENDUM CLAUSE: The "To Have and To Hold" clause which defines or limits the quantity of the estate granted in the premises of the deed.

HEREDITAMENTS: The largest classification of property; includes lands, tenements, and incorporeal property, such as rights of ways.

HIGHEST AND BEST USE: The utilization of real property to its greatest economic advantage; the use that provides the highest land value; the use of land that provides a net income stream to the land that when capitalized provides the highest land value.

HOLDER IN DUE COURSE: One who has taken a note, check or bill of exchange in due course; (1) Before it was over-

due; (2) In good faith and for value; (3) Without knowledge that it has been previously dishonored and without notice of any defect at the time it was negotiated to him.

HOLDOVER TENANT: A tenant who remains in possession of leased property after his lease has expired.

HOME OWNERS LOAN CORPORATION: An agency of the federal government that refinanced mortgages in default in the early 1930's.

HOMESTEAD EXEMPTION: Often called "homestead" or "homestead right"; a right given by statute to a householder or head of a family to designate real estate as his homestead and said homestead is exempt, up to a stated amount, from execution by his creditors. In Montana, the homestead exemption is up to $2,500.00.

HYPOTHECATE: To give a thing as security without the necessity of giving up possession of it.

IMPROVEMENT: That which is erected or constructed upon land to release the income-earning potential of the land, buildings, or appurtenances on land.

INCOME PROPERTY: A property which produces a money income to the owner.

INCOMPETENT: One who is mentally incompetent, incapable; any person who, though not insane, is, by reason of old age, disease, weakness of mind, or any other cause, unable, unassisted, to properly manage and take care of himself or his property, and by reason thereof, would be likely to be deceived or imposed upon by artful or designing persons.

INCORPOREAL RIGHTS: Nonpossessory rights in real estate.

INDEX LEASE: A lease in which the rental payment varies in accordance with variation of an agreed-upon index of prices or costs.

INHERITANCE TAXATION: Taxation imposed on property received through inheritance.

INJUNCTION: A writ or order issued under the seal of a court to restrain one or more parties to a suit or proceeding from doing an act which is deemed to be inequitable or unjust in regard to the rights of some other part or parties in the suit or proceeding.

INSTALLMENT CONTRACT: An agreement for the purchase of real estate upon an installment basis, the deed to the property is not given to the purchaser until either all or a certain portion of the purchase price is paid.

INSTITUTE OF REAL ESTATE MANAGEMENT: A professional organization of property managers.

CPM (CERTIFIED PROPERTY MANAGER): Official designation for members.

INSTITUTIONAL ADVERTISING: Advertising that pertains to real estate in general and has for its purpose the creation of favorable public attitudes toward real estate, investments in real estate, or the people engaged in the real estate business.

INSTRUMENT: A written legal document; created to effect the rights of the parties.

INSURED MORTGAGE: A mortgage in which a party other than the borrower, in return for the payment of a premium, assures payment in the event of default by a mortgagor, e.g., FHA insured mortgages.

INTER ALIA: (Latin) meaning "among other things."

INTEREST RATE: The percentage of a sum of money charged for its use. Maximum legal rate in Montana, 10%.

INTESTATE: A person who dies having made no will, or one which is defective in form, in which case his estate descends to his heirs at law or next of kin.

JOINT ESTATES: A classification of estates by number of owners where the number is two or more. See JOINT TENANCY, TENANCY IN COMMON.

JOINT TENANCY: A type of co-ownership of real property, held by two or more persons, with all co-owners being equally entitled to the use, enjoyment, control and possession of the land and with the right of survivorship.

JUDGMENT: The final determination of the rights of the parties by a court in an action before it.

JUDGMENT CREDITOR: One who has received a decree or judgment of court for money due for any reason.

JUDGMENT DEBTOR: One against whom a judgment has been issued by a court for money owed.

JUNIOR MORTGAGE: A mortgage second in priority of lien to a previous mortgage.

LAND: Real property; the surface of the earth and that which is affixed to it permanently, that which is below it, and the space above it: synonymous with "real property," "realty," and "real estate."

LAND CONTRACT: A contract ordinarily used in connection with the sale of property in cases where the seller does not wish to convey title until all or a certain part of the purchase price is paid by the buyer; often used when property is sold on small down payment.

LAND DESCRIPTION: A means of identifying the exact boundaries of land by metes and bounds, by a plat, or by township and range survey system. See LEGAL DESCRIPTION.

LAND ECONOMICS: The branch of general economics that deals with the social organization for the utilization of land resources in the attainment of the objectives that the society or community sets for itself.

LEASE: An agreement under which a tenant receives the possession and use of real property for a certain period of time and the landlord receives the payment of rent or/and the performance of other conditions.

LEASE WITH OPTION TO PURCHASE: A lease in which the lessee has the right to purchase the real property for a stipulated price at or within a stipulated time.

LEASEHOLD: An estate or right in real property held under a lease.

LEASEHOLD ESTATE: The rights of tenants as distinguished from those of a freeholder. Includes estate for years, estate at will, and estate at sufferance.

LEGAL DESCRIPTION: A means of identifying the exact boundaries of land by metes and bounds, by a plat, or by township and range survey system.

metes and bounds: "Metes" refers to measures; "bounds," to direction. Metes and bounds descriptions are means of describing land by measurement and direction from a known point or marker on land.

plat: A recorded map of land that identifies a parcel by a number or other designation in a subdivision.

township and range survey system: A system of legal description of land with a township as the basic unit of measurement.

base line: A parallel that serves as a reference for other parallels.

meridians: North-south lines of survey 6 miles apart.

parallel: East-west lines of survey 6 miles apart.

principal meridian: A meridian that serves as a reference for other meridians.

range: A north-south row of townships; the 6-mile strip of land between meridians.

section: A 1-mile square in a township.

tier: An east-west row of townships; the 6-mile strip of land between parallels.

township: A 6-mile square of land bounded by parallels and meridians, and composed of 36 sections.

LESSEE: The party who possesses a right or estate in realty, holding under a lease; also commonly referred to as the tenant.

LESSOR: The party who conveyed a right or estate in realty to the lessee under a lease; commonly referred to as the landlord.

LICENSE: A privilege or right granted by the state to operate as a real estate broker or salesman.

LICENSE LAW: Law that regulates the practices of real estate brokers and salesmen.

LIEN: A right given by law to a creditor to have a debt or charge satisfied out of the real or personal property belonging to the debtor.

LIEN THEORY OF MORTGAGE: The mortgage arrangement whereby title to mortgaged property vests in the borrower, with the lender having a lien against the property. Theory applied in Montana.

LIFE ESTATE: An estate or interest in real property which is held for the duration of the life of some certain person.

LIS PENDENS: A public notice, filed against specific lands, that an action at law is pending that may affect the title to the land.

LISTING: An agreement or contract of employment, either oral or written, whereby the owner authorizes the real estate broker to sell, exchange or lease real estate.

LOAN: A sum of money lent at interest to be repaid.

LOT: A specific plot of land.

MAI: (Member Appraisal Institute): See APPRAISER.

MAP: A representation of some feature on the earth's surface such as physical features or boundary lines and the like. See PLAT, PLAT MAP; SANBORN INSURANCE MAPS; TIME INTERVAL MAPS; TOPOGRAPHICAL MAP.

MARKET: A set of arrangements for bringing buyers and sellers together through the price mechanism.

MARKET ANALYSIS: A study of the supply, demand, and price forces at work in a particular market, also the process of studying supply, demand, and prices in a particular market, e.g., the real estate market.

MARKET VALUE: The price, in terms of dollars, which a ready and able buyer, not forced to buy, would pay and which a ready and willing seller, not forced to sell, would accept, assuming further that both parties are fully informed, act reasonably, and have sufficient time to consider the transaction with due care.

MARKETABLE OR MERCHANTABLE TITLE: A title which is free from reasonable doubt of defect which can be readily sold or mortgaged to a reasonably prudent purchaser or mortgagee; a title free from material defects or grave doubts and reasonably free from possible litigation.

MECHANIC'S LIEN: A lien created by statute which exists against real property in favor of persons who have performed work or furnished materials for the improvement of the real estate.

MERIDIANS: North-south lines of survey 6 miles apart.

METES AND BOUNDS: A method of describing or locating real property; metes refers to measures, bounds to direction; this description starts with a well-marked point of beginning and follows the boundaries of the land until it returns once more to the point of beginning.

MODEL HOUSE: A house used for exhibition in order to sell other houses.

MONTANA ASSOCIATION OF REAL ESTATE BOARDS: The state association of real estate personnel whose goal is the professional advancement of the real estate industry and whose membership is comprised of the local real estate boards.

MONUMENT: A fixed object and point established by surveyors to establish land locations.

MORATORIUM: The temporary suspension, usually by statute, of the enforcement of liability for debt.

MORTGAGE: It is a pledge or security of particular property for the payment of a debt, or the performance of some other obligation, whatever from the transaction may take, but is not now regarded as a conveyance in effect, though it may be cast in the form of a conveyance. (Muth v. Goddard 28 Mont. 237, 72 Pac. 621)

MORTGAGE INSURANCE PREMIUM: The amount paid by the borrower for insurance by the FHA of a loan.

MORTGAGEE: The party to whom the property serves as security for the repayment of a loan or fulfillment of some obligation.

MORTGAGOR: The party who, by a mortgage, uses his interest in the property as security for his obligation to repay a loan or fulfill some obligation.

MULTIFAMILY STRUCTURE: A dwelling for (usually) five or more household units.

MULTIPLE LISTING: An arrangement among real estate board or exchange members whereby they share their listing; the commission is divided, according to previous agree-

ment, between the listing broker and the selling broker, with a small percentage going to the board or exchange.

MUTUAL ASSENT: One of the essential elements of a contract, often called *Meeting of the Minds;* the agreement of the parties to the contract, mutually consenting to be bound by the exact terms thereof.

NAME ADVERTISING: Advertising that has for its main purpose the popularizing of the name, activities, and reputation of a specific real estate firm.

NATIONAL ASSOCIATION OF REAL ESTATE BOARDS: A national association of real estate personnel whose goal is the professional advancement of the real estate industry and whose membership is comprised of state and local real estate boards.

NATIONAL FOREST: A forest or watershed reservation which is administered by the Forest Service, United States Department of Agriculture.

NEGOTIABLE INSTRUMENT: A written instrument signed by a maker or drawer, containing an unconditional promise to pay a certain sum of money, which can be passed freely from one person to another.

NET LEASE: A lease in which the tenant pays certain agreed-upon property expenses such as taxes or maintenance.

NET LISTING: A listing contract whereby the owner is to receive a certain net price; the broker receives the excess over and above the net listed price as his commission.

NONFREEHOLD ESTATE: The rights of tenants as distinguished from those of a freeholder. Includes estate for years, estate at will, and estate at sufferance. See LEASEHOLD ESTATE.

NOTE: A written instrument acknowledging a debt and promising payment.

NOTICE TO QUIT: A notice to a tenant to vacate rented property.

OBSOLESCENCE: Impairment of desirability and usefulness resulting from economics, functional, physical, fashion or other changes.

OFFER: A promise by one party to act in a certain manner provided the other party will act in the manner requested.

OFFEREE: One to whom an offer is made.

OFFEROR: One who makes an offer.

OPEN HOUSE: A house that is available for inspection by potential purchasers without appointments.

OPEN LISTING: A listing contract providing that the agent shall receive a commission if the property is sold as a result of the efforts of that agent or if the agent produces a buyer under the terms of the contract before the property is sold.

OPEN-END MORTGAGE: A mortgage which states the intention of the borrower and of the lender that the mortgage shall stand as security not only for the original loan but also for future advances that the lender may be willing to make without the necessity of writing a new mortgage.

OPINION OF TITLE: The statement, usually of an attorney, as to whether he believes a title to be clear or defective.

OPTION: A temporary right for a designated period of time that one person has to purchase or lease property at a certain price, for which right a consideration is paid.

OPTIONEE: One to whom an option has been granted.

OPTIONER: One who has granted an option to another.

ORDINANCE: A public regulation such as a law (usually local laws).

OSTENSIBLE AGENCY: An implied or presumptive agency which exists where one either intentionally or from want of ordinary care induces another to believe that a third person is his agent though he never in fact employed him.

OVERIMPROVEMENT: An improvement which is not the highest and best use for the site on which it is placed by reason of excess in size or cost.

PACKAGE MORTGAGE: A mortgage in which the collateral is not limited to real property but includes personal property in the nature of household equipment.

PARALLEL: East-west lines of survey 6 miles apart.

PARTIALLY AMORTIZED MORTGAGE: A combination of an amortized mortgage and a term mortgage (straight-term mortgage).

PARTICIPATION LOAN: A mortgage loan in which more than one association has an interest. One association makes the loan, and one or more associations purchase an interest in the loan.

PARTNERSHIP: As between partners themselves, a contract of two or more persons to unite their property, labor, or skill or some of these, in prosecution of some joint and lawful business, and to share the profits in certain proportions.

PARTY WALL: A wall erected on the line between two adjoining properties, belonging to different persons, for the use of both properties; usually a wall used by two buildings.

PATENT: Conveyance of title to government land.

PERCENTAGE LEASE: A lease on property the rental for which is determined by the amount of business done by the lessee; usually the rental is a percentage of gross receipts from the business, and there is a provision for a minimum rental.

PERIODIC TENANCY: The rights to use and occupy real estate under a lease that is renewed from period to period.

PERPETUITY: Without limitation as to time, perpetual; as in capitalization in perpetuity.

PERSONAL PROPERTY: Generally, all things which are not real property; things of a temporary or movable nature.

PERSONALTY: All articles or property that are not real estate.

PLAT; PLAT MAP: A map that shows boundary lines of parcels of real estate, usually of an area that has been subdivided into a number of lots.

PLAT BOOK: A book containing a series of plat maps.

PLEDGE: The depositing of property of a debtor with a creditor as security for a debt or engagement.

POINTS: The amount of a discount stated as a percentage.

POLICE POWER: The inherent right of a government to enact such legislation as may be deemed necessary to protect and promote the health, safety and general welfare of the public.

POWER OF ATTORNEY: An instrument authorizing a person to act as the agent of the person granting it, and a general power authorizing the agent to act generally in behalf of the principal. A special power limits the agent to a particular or specific act as: a landowner may grant an agent special power of attorney to convey a single and specific parcel of property. Under the provision of a general power of attorney, the agent having the power may convey any or all property of the principal granting the general power of attorney.

PREFABRICATION: The process of manufacturing component parts of a structure in a factory for later assembly on-site.

PREPAYMENT PENALTY: A penalty for the payment of a debt before it actually becomes due.

PRESENT VALUE: See CAPITALIZATION.

PRICE: That amount of money at which property is offered for sale or is exchanged for at a sale; value in terms of money.

PRINCIPAL: Any person, partnership, association or corporation who authorizes another, called the agent, to do certain acts on his behalf. Also, the amount of a debt.

PRINCIPAL MERIDIAN: A meridian that serves as a reference for other meridians.

PRINCIPAL NOTE: The promissory note which is secured by the mortgage or trust deed.

PRIVATE GRANT: The transfer of real property from one person to another.

PRIVATE PROPERTY: Property held by individuals or by groups of individuals except when such a group constitutes a public organization.

PROBATE: The proof or act of proving at a court that a last will and testament is actually the last will and testament of a deceased person.

PROPERTY: The rights of ownership; the right to use, possess, enjoy, and dispose of a thing in every legal way and to exclude everyone else from interfering with these rights. Property is generally classified into two groups: personal property and real property.

PROPERTY BRIEF: A folder that presents pertinent information about a property.

PROPERTY MANAGEMENT: The operation of real property including the leasing of space, collection of rents, selection of tenants, and the repair and renovation of the buildings and grounds.

PROPERTY OWNERS' ASSOCIATION, PROPERTY OWNERS' MAINTENANCE ASSOCIATION: Organizations with the purpose of administering private regulations affecting residential land uses.

PUBLIC GRANT: A government grant of real property to a private party; a transfer of real property from government to a person.

PUBLIC HOUSING: Housing owned by a governmental body.

PUBLIC PROPERTY: Property held by government.

PUBLIC TRUSTEE: The public official in each county, whose office has been created by statute, to whom title to real property is conveyed by Trust Deed for the use and benefit of the beneficiary, who usually is the lender.

PURCHASE MONEY MORTGAGE: A mortgage given by the purchaser to secure a loan for part or all of the purchase price; such a mortgage becomes a lien on the property simultaneously with the passing of title, and if immediately recorded becomes prior to any lien against the purchaser.

PURCHASE ON CONTRACT: The purchase of property on installments with title remaining with seller. See LAND CONTRACT.

QUIET TITLE SUIT: An action in court to remove a defect, cloud or suspicion regarding the legal rights of the owner to the parcel of real estate.

QUIT CLAIM DEED: A deed in which the grantor warrants nothing; it conveys only the grantor's present interest in the real estate, if any.

RANGE: A strip of land six miles wide determined by a government survey, running in a north-south direction.

REAL ESTATE: In a physical sense, land with or without buildings or improvements; in a legal sense, the rights in such physical objects.

REAL ESTATE ADMINISTRATION: See ADMINISTRATION OF REAL ESTATE RESOURCES.

REAL ESTATE APPRAISAL: See APPRAISAL.

REAL ESTATE BROKER: An agent who negotiates the sale of real property or real property services for a commission that is contingent on success.

REAL ESTATE BUSINESS: The business that deals in rights to income or income potentials at fixed locations. It is concerned with production, marketing, and financing of these rights.

REAL ESTATE DEVELOPING: The process of preparing land for use, constructing buildings and other improvements, and making the completed properties available.

REAL ESTATE FINANCING: The channeling of savings into the production and use of real estate; facilitating the production and use of real estate through borrowed or equity funds. Also, the area of study dealing with the foregoing.

REAL ESTATE INVESTMENT CORPORATION: A corporation that sells its securities to the public and has a special interest in real estate or is a builder or developer of real estate.

REAL ESTATE INVESTMENT TRUSTS: A trust established in a form similar to that of an investment or mutual fund for the purpose of allowing investors to channel funds into the real estate market.

REAL ESTATE MARKETING: The process of putting real properties and their services into the hands of consumers. Brokerage and property management are the two main subdivisions of real estate marketing.

REAL ESTATE SYNDICATE: A partnership organized for participation in a real estate venture. Partners may be limited or unlimited in their liability.

REAL PROPERTY: Land, the surface of the earth and whatever is erected, growing upon, or affixed to the land, including that which is below it and the space above it; synonymous with "land," "realty," and "real estate."

REALTOR: The terms of a copyrighted trade name which can be used only by those persons belonging to the National Association of Real Estate Boards.

REALTY: Real property, land, real estate.

REAPPRAISAL LEASE: A lease in which an arrangement is made for determination of the amount of rent at some future period by independent appraisers.

RECEIVER: A court appointed custodian who holds property for the Court, pending final disposition of the matter before the Court.

RECORDING: The act of writing or entering in a book of public record, usually in the office of the county clerk and recorder; such recordings constitutes notice to all persons of the rights or claims contained in the instrument; this type of notice is called "constructive notice" or "legal notice."

RECOURSE: The right to claim against a prior owner of a property or note.

REDEMPTION: The right of an owner to redeem or reclaim the real estate by paying the debt or charge (such as mortgage or tax lien) after default, together with interest and costs. More correctly, equity of redemption refers to the right to redeem the property after default but *before* foreclosure; the statutory right of redemption refers to the right to redeem the property *after* foreclosure, or other enforcement action, during a certain period of time specified by statute; for example, in Montana, the mortgagor has the statutory right to redeem his property any time within one year after a mortgage foreclosure sale.

REDEVELOPMENT: Typically the processes of clearance and reconstruction of blighted areas.

REGISTRAR OF DEEDS, RECORDER: Officer in charge of land records office.

REHABILITATION: The removal of blight by repair and renovation rather than by destruction of improvements.

RELEASE: The relinquishment or surrender of a right, claim, or interest.

RELEASE CLAUSE: A stipulation that upon the payment of a

specific sum of money to the holder of a trust deed or mortgage, the lien on a specific described lot or area shall be removed from the blanket lien on the whole area involved.

RELEASE OF LIEN: The discharge or release of specific property from the charge or lien of a judgment, mortgage or other claim.

REMAINDER: An estate which vests after the termination of the prior estate, such as a life estate.

RENEWAL: The process of redevelopment or rehabilitation in cities; often used in relation to rebuilding or restoration of blighted areas.

RENT CONTROLS: The legal provision for a maximum rental payment for the use of real property.

RESERVATION: A right retained by a grantor in conveying property.

RESERVES: Those portions of earnings which have been set aside to take care of possible losses in the conduct of business; listed in the balance sheet as a liability item.

RESTRICTIVE COVENANT: A clause in a deed limiting the use to which the property may be put.

REVENUE STAMPS: Under the U. S. Internal Revenue Act of 1940, revenue stamps are required to be placed on conveyances of real estate in the amount of 55 cents for a consideration of $100 to $500, and 55 cents for each additional $500 of consideration or fraction thereof; also called "documentary stamps." Repealed as of January 1, 1967.

REVERSION: The residue of an estate left with the grantor that entitles him to possession after the end of another estate; a classification of estates by time of enjoyment.

REVERSIONARY INTEREST: The interest which a person has in lands or other property, upon the termination of the preceding estate.

RIGHT OF SURVIVORSHIP: A characteristic of a joint tenancy; upon the death of one of the joint tenants, his rights in the property passes automatically to the surviving tenant or tenants.

RIGHT OF WAY: An easement or right of passage over another's land; the strip of land used as roadbed by a railroad or used for a public purpose by other public utilities.

ROD: A unit of linear measure representing a length of 5½ yards.

SALE-LEASEBACK: An arrangement that provides for a simultaneous transfer of ownership and execution of lease —the grantor becomes the lessee and the grantee the lessor.

SALESMAN (REAL ESTATE): Any person who for compensation or valuable consideration is employed either directly or indirectly by a real estate broker to sell, buy, exchange, lease or rent real estate or to offer to sell, buy, exchange, lease or rent real estate for another or others.

SATISFACTION: An instrument for recording and acknowledging payment of an indebtedness secured by a mortgage.

SEARCH OF TITLE: A study of the history of the title to a property.

SECTION: Section of land is established by government survey and contains 640 acres.

SECURITY: Something given, deposited, or pledged to make secure the fulfillment of an obligation or the payment of a debt.

SELLER'S MARKET: A market in which potential sellers can sell at prices higher than those prevailing in an immediately preceding period; a market characterized by very few properties available and a large number of users and potential users demanding them at prevailing prices.

SENIOR MORTGAGE: A mortgage having a claim ranking above that of another mortgage.

SERVICING: The collection of payments on a mortgage. Servicing by the lender also consists of operational procedures covering accounting, bookkeeping, insurance, tax records, loan-payment follow-up, delinquent-loan follow-up, and loan analysis.

SHERIFF'S DEED: A deed given by court order in connection with the sale of property to satisfy a judgment.

SIMPLE LISTING: Listing property with a broker for sale or rent other than through exclusive agency or an exclusive right-to-sell contract; an open listing, usually verbal.

SINGLE-FAMILY HOME: A dwelling intended for occupancy by one household only.

SINKING FUND: A fund set aside from the income from property which, with accrued interest, will eventually pay for replacement of the improvements.

SITUS: Location.

SLUM CLEARANCE: The removal of blighted improvements by destruction of the improvements.

SOCIETY OF REAL ESTATE APPRAISERS: A trade association of residential real estate appraisers.

SPECIAL ASSESSMENT: An assessment levied for specific purposes such as providing streets, sewers, sidewalks, and the like. An assessment related to benefit derived by the taxed.

SPECIAL WARRANTY DEED: A deed in which the grantor warrants or guarantees the title only against defects arising during his ownership of the property and not against defects existing before the time of his ownership.

SPECIFIC PERFORMANCE: A remedy which the court will grant, in certain cases, compelling the defendant to perform or carry out the terms of a valid, existing agreement or contract.

STATUTE OF FRAUDS: State law which provides that certain contracts must be in writing in order to be enforceable at law. Examples: real property lease for more than one year; agent's authorization to sell real estate.

STATUTORY RIGHT OF REDEMPTION: The right under law of the mortgagor to redeem title to real property after a foreclosure sale.

STRAIGHT-TERM MORTGAGE: A mortgage in which repayment of principal is in one lump sum at maturity.

STRICT FORECLOSURE: See FORECLOSURE.

SUBCONTRACTOR: A contractor who contracts from another, usually a general contractor. A subcontractor usually is concerned only with one particular part of the improvement of real estate such as plumbing, masonry, carpentry, and the like.

SUBDIVISION: An area of land divided into parcel or lots generally of a size suitable for residential use.

SUBJECT TO MORTGAGE: When a grantee takes title to real property subject to mortgage, he is not responsible to the holder of the promissory note for the payment of any portion of the amount due. The most that he can lose in the event of a foreclosure is his equity in the property.

SUBLEASE: A lease given by a lessee.

SUBLETTING: A leasing by a tenant to another, who holds under the tenant.

SUBORDINATION CLAUSE: (1) A clause in a junior lien permitting retention of priority for other liens; (2) a clause in a first deed of trust, permitting it to be subordinated to subsequent liens, for example, the liens of construction loans.

SUBURB: A development of real estate in areas peripheral to the central area of a city.

SURRENDER: In leases, it is the cancellation of a lease by mutual consent of lessor and lessee.

SURVEY: A measurement of land to determine boundaries or points of location on land; the process of determining, or the map that shows, the exact dimension and location of a site and possibly such things as levels of the land by contour lines, boundaries and their relationship to natural formations, and the location of streets, sewers, water, and gas and electric lines.

TAX LIEN: A claim against property arising out of nonpayment of taxes; the claim may be sold by the taxing authority.

TAX TITLE: The title to real property acquired through a forced sale for taxes; an interest in real property that will become ownership if the defaulting taxpayer does not redeem the property.

TENANCY BY ENTIRETY: An estate held by husband and wife where both are viewed as one person under common law, which thus provides for the right of survivorship. Non-existent in Montana.

TENANCY IN COMMON: A type of co-ownership of real property; a holding of an estate in land by two or more persons, each being entitled to possession of the property according to his proportionate share; distinct from a joint tenancy in that there is no right of survivorship in a tenancy in common.

TIER: An east-west row of townships; the 6-mile strip of land between parallels.

TITLE: Proof or evidence of ownership or ownership rights.

TITLE BY DESCENT: Title acquired by the laws of succession; title acquired by an heir in the absence of a will.

TITLE BY DEVISE: Title received through a will.

TITLE INSURANCE: A policy of insurance which indemnifies the holder for loss sustained by reason of a defect in the title, provided the loss does not result from a defect excluded by the policy provisions.

TITLE REPORT: A report which discloses condition of the title made by a licensed title company preliminary to issuance of title insurance.

TITLE THEORY OF MORTGAGE: The mortgage arrangement whereby title to mortgaged real property vests in the lender.

TOPOGRAPHICAL MAP: A map that shows the slope and contour of land; a map of the physical features of a parcel of real estate or an area of land.

TOPOGRAPHY: Contour and slope of land and such things as gullies, streams, knolls, and ravines.

TORRENS SYSTEM: A system of land title registration in which the state guarantees title.

TOWNSHIP: A territorial subdivision six miles long, six miles wide and containing 36 sections, each one mile square.

TRUST DEED: A form of mortgage deed by which a borrower or debtor conveys title to his property to a Trustee, who holds the title for the protection of a lender or creditor as a pledge or security for the repayment of the loan or debt described in the instrument.

TRUSTEE: One who holds property in trust for another to secure the performance of an obligation.

TRUSTOR: One who deeds his property to a trustee to be held as security until he has performed his obligation to a lender under terms of a deed of trust.

UNDUE INFLUENCE: Taking any fraudulent or unfair advantage of another's weakness of mind, or distress or necessity.

UNITED STATES GOVERNMENTAL SURVEY SYSTEM: Often called the rectangular survey system; a method of describing or locating real property by reference to the governmental survey.

USURY: Charging more than the legal rate of interest for the use of money—10% in Montana.

VALUATION: See APPRAISAL.

VALUE OF PROPERTY: The usefulness of the property relative to its scarcity.

VENDEE: A buyer.

VENDOR: A seller.

VESTED: Bestowed upon someone; secured by someone, such as title to property.

VETERANS ADMINISTRATION (VA): An agency of the federal government that, among other activities, guarantees loans made to veterans.

VOIDABLE: That which is capable of being adjudged void, but is not void unless action is taken to make it so.

WAIVE: To relinquish, or abandon; or forego a right to enforce or require anything.

WARRANTY DEED: Often called a general warranty deed; a deed in which the grantor warrants or guarantees the title to real property against defects existing before the grantor acquired title or arising during the grantor's ownership.

WASTE: Damage to property by neglect or otherwise.

WRIT OF EXECUTION: A writ or court order authorizing and directing an officer of the court, usually the sheriff, to carry into effect the judgment or decree of the court.

ZONING: Act of city or county authorities specifying type of use to which property may be put in specific areas.

Section XXVIII

Additional Readings in Real Estate

The following list of books and pamphlets, alphabetically arranged according to subject, is a relatively complete list of the many fine writings in real estate, but is not intended to be a complete listing.

It is strongly recommended to the student and practitioner, who wishes to increase his knowledge and competency in real estate, that he read and study some of these or similar books.

Following the author of the material listed is a number, e.g., (1). This number is keyed to a list of publishers and their addresses at the end of this section. This list of publishers is provided to facilitate ease in acquiring selected materials.

ADVERTISING

Advertising Real Estate Successfully, NIREB, (1), $8.00

How to Get More Out of Your Advertising, NAREB Department of Public Relations, (2), Free

How to List and Sell Real Estate in a Competitive Market, California Real Estate Association, (3), $3.00

How to Use Classified Advertising to Sell More Real Estate, McDonald, (1), 1958, $5.80

Master Guide to Successful Real Estate Advertising, McDonald, (1), 1962, $15.30

The Professional Approach to Listing and Selling Homes and Small Income Properties, California Real Estate Association, (3), $3.00

Real Estate Advertising, National Institute of Real Estate Brokers, (1), 1961, $1.25

Realtor's Public Relations Guide, California Real Estate Association, (1), 75¢

Sales and Profit Approach to Real Estate Advertising, Wycoff, (1), 1959, $8.10

Successful Direct Mail Advertising and Selling, Stone, (1), $5.90

APPRAISAL AND CONDEMNATION

Acquisition for Right of Way, American Association of State Highway Officials, (1), $5.65

Appraisal and Assessment Dictionary, Cherney, (1), $10.15

Appraisal Guide for Mobile Home Parks, Randall, (1), 1966, $10.15

Appraisal Journal Index-Bibliography, (1), 1932-1954, $2.00

Appraisal Journal Index-Bibliography, (1), 1955-1963, $2.00

The Appraisal of Real Estate, American Institute of Real Estate Appraisers, 5th ed., (1), $9.00

The Appraisal Process, Schmutz, 3rd ed., (1), $8.15

Appraising Apartment Buildings, California Real Estate Association, (1), $3.15

Appraising Manual, McMichael, 4th ed., (1), $7.10

Capitalization Tables with Problems and Solutions, American Institute of Real Estate Appraisers, (1), $1.00

Case Studies in Air Rights and Subsurface Tunnel Road Easements, American Institute of Real Estate Appraisers, (1), $2.50

Case Studies in Apartment House Valuation, American Institute of Real Estate Appraisers, (1), $2.00

Case Studies in Shopping Center Valuation, American Institute of Real Estate Appraisers, (1), $2.50

Condemnation Appraisal Handbook, Schmutz & Rams, rev. ed., (1), $13.10

Condemnation Appraisal Practice, American Institute of Real Estate Appraisers, (1), 1961, $10.00

Condemnation Appraisal Text Reference, American Society of Appraisers, (39)

The Control of Highway Access, Netherton, (1), $10.15

The Cost Approach to Appraisals for Property Insurance, Perthou, (1), $15.15

Economic Factors & Case Studies in Hotel and Motel Valuation, American Institute of Real Estate Appraisers, (1), 1962, $2.50

Ellwood's Tables for Real Estate Appraising and Financing, Ellwood, (1), $10.15

Encyclopedia of Real Estate Appraising, Friedman, (1), 1967, $30.10

Estimating Construction Costs, Peurifoy, (1), $10.90

Farm Appraisal & Valuation, Murray, 4th ed., (1), 1961, $7.65

Forest Valuation, Chapman & Meyer, (1), $9.65

A Guide to Appraising Apartments, Kinnard, (1), $2.15

A Guide to Narrative Appraisal Reporting, Society of Real Estate Appraisers, (1), $1.15

How to Estimate Market Value in Selling Real Estate, Arnold, (1), 1962, $6.10

Institute on Eminent Domain Proceedings, Annual, (1), $15.15

Introduction to Real Estate Appraisals, NAREB Department of Education, (1), $1.50

Just Compensation, Kaltenbach (Looseleaf Service), (1), $39.65

Manual of Appraisals, Boeckh, 6th ed., (1), 1963, $23.50

Modern Real Estate Valuation; Theory and Application, Ratcliff, (1), $8.15

Oil Property Evaluation, Campbell, (38), 1959

101 Rural Appraisal Problems with Suggested Solutions, American Institute of Real Estate Appraisers, (1), 1958, $4.00

Problems in Urban Real Estate Appraisal, American Institute of Real Estate Appraisers, (1), 1963, $7.50

Real Estate Appraisal and Investment, Case, Kahn & Schimmel, (1), $9.15

Real Estate Appraisal Bibliography, American Institute of Real Estate Appraisers, (1), $5.00

Real Estate Appraisal in a Nutshell, Stewart, (40), 1962

Real Estate Appraisal Manual, Knowles & Pervear, 2nd ed., (1), 1957, $10.15

Real Estate Appraisal Principles & Terminology, Society of Real Estate Appraisers, (1), $5.15

Real Estate Valuation & Highway Condemnation Awards, Ratcliff, (1), $1.65

Report on Unique Features of Urban Renewal Appraisal Assignments, American Institute of Real Estate Appraisers, (1), $1.00

Residential Appraisal Manual, Wenzlick, (1), 1959, $10.15

Residential Cost Handbook, Marshall and Stevens (Looseleaf Service), (1), $15.15

A Restatement of Appraisal Theory, Ratcliff, (1), $1.15

Single Family Dwellings, American Institute of Real Estate Appraisers, (1), $4.50

Single Family Residential Appraisal Manual, Knowles, American Institute of Real Estate Appraisers, (1), $6.00

Syllabus, The Appraisal of Real Estate; A Study Guide for Real Estate Appraisal I, American Institute of Real Estate Appraisers, (1), $3.50

Ten Case Studies of Sales of Large Real Estate Investment Properties, American Institute of Real Estate Appraisers, (1), $3.00

Trends of Office Building Design & Comparative Operation Studies of Old and New Buildings, American Institute of Real Estate Appraisers, (1), $2.50

Urban Renewal and Redevelopment, American Institute of Real Estate Appraisers, (1), $4.00

Valuation of Real Estate, Ring, (1), 1963, $10.15

Valuation Service, Marshall and Stevens (Looseleaf Service), (1), $35.00

BROKERAGE

Brokers Institute Digest, National Institute of Real Estate Brokers, (1), $5.00

Dynamics of Commercial Property, National Institute of Real Estate Brokers, (1), $1.25

Farm and Ranch Brokers Manual, National Institute of Farm & Land Brokers, rev. ed., (1), $5.00

Five Points of Real Estate Brokerage, Kent, (29), 1963, $10.00

How Any Woman Can Bank $10,000 a Year in Real Estate, Wald, (1), $6.10

How to Be Consistently Successful in Real Estate, Russell, (1), 1958, $5.10

How to Find, Qualify & Induce Real Estate Prospects to Buy, Moser, (1), $7.10

How to Get Salable Real Estate Listings, Bohon, (1), 1961, $7.10

Making Big Money in Real Estate, Barrow, (1), $7.10

Marketing Real Estate Successfully, National Institute of Real Estate Brokers, (1), $8.00

Master Guide to Income Property Brokerage, Peckham, (1), $15.15

Miracle Real Estate Guide, Barr, (1), $15.15

Practical Real Estate Brokerage, Kent and Corb, (1), 1961, $10.15

The Professional Approach to Listing and Selling Homes and Small Income Properties, California Real Estate Association, (1), $3.15

Questions and Answers for the Real Estate Broker's & Salesman's Exams, Unger, (6), 1965, $2.50

Real Estate Brokerage, Case, (1), $7.65

Real Estate Listing Magic, Himmah, (1), $7.10

Real Estate Practice in California, Lundberg, (38), 1965, $7.50

Real Estate Salesman & Broker, Liebers, (7), 1966, $4.00

The Practice of Real Estate, Fortney, (1), 1967, $8.10

Treasury of Money-Making Real Estate Ideas and Practices, (1), $15.30

BUILDING COST MANUALS

Building Construction Cost Data, Means, (1), 1966, $3.65

Building Construction Estimating, Cooper, (5), 1959

Building Cost and Specification Digest, F. W. Dodge Corporation, (Annual), (Looseleaf Service—Semi-annual), (1), $75.00

Building Products Register, American Institute of Architects, (Annual), (34), 1961

Dow Building Cost Calculator and Valuation Guide, F. W. Dodge Corporation, (Annual), (Looseleaf Service—Quarterly), (1), $40.00

House Construction Details, Burbank and Shaftel, (9)

COMMERCIAL PROPERTY

Creative Railroad Real Estate Development—A Dialogue, Railway Systems and Management Association, (1), $5.15

Design Development, Management of Medical Buildings, Institute of Real Estate Management, (1), $1.50

Developing a Profitable Railroad Real Estate Program, Railway Systems and Management Association, (1), $5.15

Directory of Leading Chain Stores, (Biennial), (1), 1965, $60.00

Dynamics of Commercial Property, National Institute of Real Estate Brokers, (1), 1961, $1.25

Franchise Annual, Franchise Reports, (Annual), (1), $2.00

Office Building Experience Exchange Report, National Association of Building Owners and Managers, (Annual), (includes subscription to Skyscraper Management), (1), $30.15

Office Buildings, Gunliffe & Manassen, (1), 1962, $13.10

Parking Industry Operating Cost Survey, National Parking Association, (1), $9.15

The Planning of Branch Stores, National Retail Merchants Association, (1), $3.30

Selection of Retail Locations, Nelson, (1), 1958, $10.90

Shops and Stores, Ketchum, (1), $10.15

Small Office Buildings, *Urban Land*, April 1961, (1), $1.15

A Systematic Guide to Supermarket Location Analysis, Kane, (1), $8.10

CONDOMINIUM & COOPERATIVE OWNERSHIP

Condominiums, Wagner, Reprint from the *Appraisal Journal*, January 1964, (1), $1.00

Condominium—A Symposium, Reprint from the *Appraisal Journal*, October 1962, (1), $1.00

Condominium: Housing for Tomorrow; A Study Prepared by Graduate Students of Harvard, Burke, (1), $15.15

Condominium in Hawaii, Honolulu Board of Realtors, (1), $10.15

Condominium Law and Practice; Forms, Rohan & Resking, (1), $35.30

Cooperative Housing Law and Practice; Forms, Rohan, (1), 1967, $35.15

Housing—The Cooperative Way, Selected Readings, Liblit, (1), $6.15

How to Organize and Sell a Profitable Real Estate Condominium, Berman, (1), $15.15

More on Condominium, Reprint from the *Appraisal Journal*, July 1964

The Tax Advantages of Cooperatives and Condominiums, Hagendorf, (1), $3.65

EXCHANGES AND TRADE-INS

Exchanging is Creative Selling, National Institute of Real Estate Brokers International Traders Club, Exchange Division, (1), $3.00

Home Trade-In Handbook, National Institute of Real Estate Brokers, (1), 1966, $2.00

Home Trade-In Manual, California Real Estate Association, (1), 1966, $5.10

Home Trade-In Workbook, California Real Estate Association, (3), $4.95

How to Create Wealth Through Exchanging, National Institute of Real Estate Brokers International Traders Club, Exchange Division, (1), $3.00

The "How To" Library of Successful Selling and Exchanging of Real Estate, 5 vol., Monsees, (1), $16.10

How to Operate a Real Estate Trade-In Program, Stone, (1), $12.65

Key to a Successful Exchange—Negotiating & Financing, National Institute of Real Estate Brokers International Traders Club, Exchange Division, (1), $3.00

Planning the Exchange, National Institute of Real Estate Brokers International Traders Club, Exchange Division, (1)

Real Estate Exchange Techniques with Tax Implication, Jacobson, 2nd ed., (1), $5.90

Real Estate Trader's Handbook, National Institute of Real Estate Brokers (1), 1966, $5.00

Tax Implications in Exchanging, National Institute of Real Estate Brokers International Traders Club, Exchange Division, (1), $3.00

Techniques of Investment Property Exchanging, National Institute of Real Estate Brokers International Traders Club, (1), $2.50

FINANCE AND INVESTMENT

Accounting Desk Book, Casey, (1), $15.10

The Apartment Building Feasibility Study: Its needs, components and production, Ratcliffe, Reprint from the *Journal of Property Management*, July 1967, (1), $2.00

California Real Estate Finance, Pugh and Hippaka, (38), 1966, $8.95

Cases in Real Estate Finance, Mao, (43), 1959, $3.00

Developing, Selling and Syndicating Real Estate Investment Property, California Real Estate Association, (1), $6.10

Development and Management of Investment Property, Hanford, (1), $6.75

Dollars in California Real Estate, Bentley, (10), 1962, $5.95

Dynamics of Real Estate Investment: Apartments, Commercial Land, California Real Estate Association, (1), $6.10

Estate Planning Desk Book, Casey, (10), $10.15

The Fass System for Profits in Residential Income Property, Fass, (1), 1965

Financing Real Estate, Maisel, (1), 1965, $9.65

How to Build a Fortune in Real Estate, Moser, (38), 1965, $5.95

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51. International City Managers Association, 1313 E. 60th St., Chicago, Illinois
52. G. P. Putnam's Sons, 200 Madison Ave., New York, New York 10016

Section XXIX

Professional Responsibilities and Code of Ethics

> What is generally called the "ethics" of the profession is but consensus of expert opinion as to necessity of professional standards. (Cherry v. Board of Regents of University of State of New York, 44 N.E. 2d 405, 412)

As the quotation above suggests the exact meaning of ethics, and more particularly, professional ethics means different things to different people. Notwithstanding, it is essential that any group of people who work with the public, whether they call themselves professionals or not, have a consensus as to how they are to act while dealing with the public and each other.

Whenever a person, who holds himself out to the general public as being an expert or having specialized knowledge, assumes the duty of handling or directing the affairs or finances of another, there is vested in him a high degree of confidence and trust *that must not be betrayed.*

If this trust and confidence is betrayed, the wrong-doer has breached either his lawful or his moral duty—i.e., ethical duty.

Professional courtesy and ethics should not stop at those things which have been sanctioned by law. The man who tries only to stay on the border of the law inevitably at some time steps across. The course of conduct set forth in the section of law and real estate (See Section XXVI) is that which a broker *must* observe. What will be considered hereafter is what he *should observe.* Only by adopting and following these ethical standards, will the general public extend the trust and confidence so needed for a beneficial business relationship.

The Realtor Code of Ethics which follows was first adopted by the National Association of Real Estate Boards in 1913. The Code has been kept up to date by subsequent amendments, and by extensive re-drafting in 1955.

The Realtor Code of Ethics is, of course, obligatory only upon members of the National Association of Real Estate Boards and constituent local boards. However, it is the only nationally recognized Code of its kind. Consequently, the Montana Real Estate Commission strongly recommends the study and practice of the Realtor Code of Ethics.

CODE OF ETHICS
NATIONAL ASSOCIATION OF REAL ESTATE BOARDS

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. The Realtor is the instrumentality through which the land resource of the nation reaches its highest use and through which land ownership attains its widest distribution. He is a creator of homes, a builder of cities, a developer of industries and productive farms.

Such functions impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which the Realtor should dedicate himself, and for which he should be diligent in preparing himself. The Realtor, therefore, is zealous to maintain and improve the standards of his calling and shares with his fellow-Realtors a common responsibility for its integrity and honor.

In the interpretation of his obligations, he can take no safer guide than that which has been handed down through twenty centuries, embodied in the Golden Rule:

"Whatsoever ye would that men should do to you, do ye even so to them."

Accepting this standard as his own, every Realtor pledges himself to observe its spirit in all his activities and to conduct his business in accordance with the following Code of Ethics:

Part I. Relations to the Public

ARTICLE 1.

The Realtor should keep himself informed as to movements affecting real estate in his community, state, and the nation, so that he may be able to contribute to public thinking on matters of taxation, legislation, land use, city planning, and other questions affecting property interests.

ARTICLE 2.

It is the duty of the Realtor to be well informed on current market conditions in order to be in a position to advise his clients as to the fair market price.

ARTICLE 3.

It is the duty of the Realtor to protect the public against fraud, misrepresentation or unethical practices in the real estate field. He should endeavor to eliminate in his community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The Realtor should assist the board or commission charged wtih regulating the practices of brokers and salesmen in his state.

ARTICLE 4.
The Realtor should ascertain all pertinent facts concerning every property for which he accepts the agency, so that he may fulfill his obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

ARTICLE 5.
The Realtor should not be instrumental in introducing into a neighborhood a character of property or use which will clearly be detrimental to property values in that neighborhood.

ARTICLE 6.
The Realtor should not be a party to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

ARTICLE 7.
The Realtor should not engage in activities that constitute the practice of law and should recommend that title be examined and legal counsel be obtained when the interest of either party requires it.

ARTICLE 8.
The Realtor should keep in a special bank account, separated from his own funds, monies coming into his possession in trust for other persons, such as escrows, trust funds, client's monies and other like items.

ARTICLE 9.
The Realtor in his advertising should be especially careful to present a true picture and should neither advertise without disclosing his name, not permit his salesmen to use individual names or telephone numbers, unless the salesman's connection with the Realtor is obvious for the advertisement.

ARTICLE 10.
The Realtor, for the protection of all parties with whom he deals, should see that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties; and that copies of such agreements, at the time they are executed, are placed in the hands of all parties involved.

Part II. Relations to the Client

ARTICLE 11.
In accepting employment as an agent, the Realtor pledges himself to protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary,

but it does not relieve the Realtor from the obligation of dealing fairly with all parties to the transaction.

ARTICLE 12.

In justice to those who place their interests in his care, the Realtor should endeavor always to be informed regarding laws, proposed legislation, governmental orders, and other essential information and public policies which affect those interests.

ARTICLE 13.

Since the Realtor is representing one or another party to a transaction, he should not accept compensation from more than one party without the full knowledge of all parties to the transaction.

ARTICLE 14.

The Realtor should not acquire an interest in or buy for himself, any member of his immediate family, his firm or any member thereof, or any entity in which he has a substantial ownership interest, property listed with him, or his firm, without making the true position known to the listing owner, and in selling property owned by him, or in which he has such interest, the facts should be revealed to the purchaser.

ARTICLE 15.

The exclusive listing of property should be urged and practiced by the Realtor as a means of preventing dissension and misunderstanding and of assuring better service to the owner.

ARTICLE 16.

When acting as agent in the management of property, the Realtor should not accept any commission, rebate or profit on expenditures made for an owner, without the owner's knowledge and consent.

ARTICLE 17.

The Realtor should not undertake to make an appraisal that is outside the field of his experience unless he obtains the assistance of an authority on such types of property, or unless the facts are fully disclosed to the client. In such circumstances the authority so engaged should be so identified and his contribution to the assignment should be clearly set forth.

ARTICLE 18.

When asked to make a formal appraisal of real property, the Realtor should not render an opinion without careful and thorough analysis and interpretation of all factors affecting the value of the property. His counsel constitutes a professional service.

The Realtor should not undertake to make an appraisal or render an opinion of value on any property where he has a present or contemplated interest unless such interest is specifically disclosed in the appraisal report. Under no circumstances should he undertake to make a formal appraisal when his employment or fee is contingent upon the amount of his appraisal.

ARTICLE 19.

The Realtor should not submit or advertise property without authority and in any offering, the price quoted should not be other than that agreed upon with the owners as the offering price.

ARTICLE 20.

In the event that more than one formal written offer on a specific property is made before the owner has accepted an offer, any other formal written offer presented to the Realtor, whether by a prospective purchaser or another broker, should be transmitted to the owner for his decision.

Part III. Relations to His Fellow-Realtor

ARTICLE 21.

The Realtor should seek no unfair advantage over his fellow-Realtors and should willingly share with them the lessons of his experience and study.

ARTICLE 22.

The Realtor should so conduct his business as to avoid controversies with his fellow-Realtors. In the event of a controversy between Realtors who are members of the same local board, such controversy should be arbitrated in accordance with the regulations of their board rather than litigated.

ARTICLE 23.

Controversies between Realtors who are not members of the same local board should be submitted to an arbitration board consisting of one arbitrator chosen by each Realtor from the real estate board to which he belongs or chosen in accordance with the regulations of the respective boards. One other member, or a sufficient number of members to make an odd number, should be selected by the arbitrators thus chosen.

ARTICLE 24.

When the Realtor is charged with unethical practice, he should place all pertinent facts before the proper tribunal of the member board of which he is a member, for investigation and judgment.

ARTICLE 25.

The Realtor should not voluntarily disparage the business practice of a competitor, nor volunteer an opinion of a competitor's transaction. If his opinion is sought it should be rendered with strict professional integrity and courtesy.

ARTICLE 26.

The agency of a Realtor who holds an exclusive listing should be respected. A Realtor cooperating with a listing broker should not invite the cooperation of a third broker without the consent of the listing broker.

ARTICLE 27.

The Realtor should cooperate with other brokers on property listed by him exclusively whenever it is in the interest of the client, sharing commissions on a previously agreed basis. Negotiations concerning property listed exclusively with one broker should be carried on with the listing broker, not with the owner, except with the consent of the listing broker.

ARTICLE 28.

The Realtor should not solicit the services of an employee or salesman in the organization of a fellow-Realtor without the knowledge of the employer.

ARTICLE 29.

Signs giving notice of property for sale, rent, lease or exchange should not be placed on any property by more than one Realtor, and then only if authorized by the owner, except as the property is listed with and authorization given to more than one Realtor.

ARTICLE 30.

In the best interest of society, of his associates and of his own business, the Realtor should be loyal to the real estate board of his community and active in its work.

CONCLUSION

The term *Realtor* has come to connote competence, fair dealing and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instructions from clients ever can justify departure from this ideal, or from the injunctions of this Code.

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